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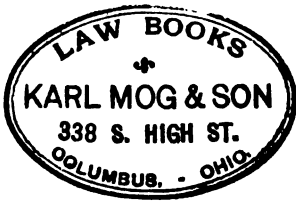
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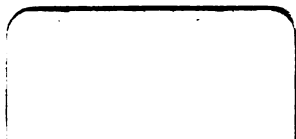
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DEPARTMENT REPORTS

of the

STATE OF OHIO

EMBRACING TWENTY-SIX ISSUES DATING FROM OCTOBER 16, 1919,
TO APRIL 8, 1920.

Containing the

DECISIONS---OPINIONS---RULINGS

OF THE SUPREME COURT, PUBLIC UTILITIES COMMISSION, ATTOR-
NEY GENERAL, INDUSTRIAL COMMISSION, STATE BANKING DE-
PARTMENT, TAX COMMISSION, LIQUOR LICENSE COMMIS-
SION, BUREAU OF INSPECTION AND SUPERVISION OF
PUBLIC OFFICES, INSURANCE DEPARTMENT,
STATE HIGHWAY DEPARTMENT, ETC.

and

SUBJECTS OF LEGISLATION, WHEN THEY SHALL PROVE
OF INTEREST TO OUR SUBSCRIBERS

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PUBLIC UTILITIES COMMISSION

No. 1753—In the Matter of the Joint Application of the Garrett Electric Light & Power Company, Individually Owned, and The Garrett Electric Light & Power Company, a Corporation, for Authority for the Sale and Transfer of Certain Electric Light and Power Plants and Property. Prayer Granted.

(Dated September 24, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of one C. C. Garrett, the owner and operator, under the trade name of the Garret Electric Light & Power Company, of the electric light and power plants located at Seamans and Winchester, Ohio, and The Garrett Electric Light & Power Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this commission, of the sale, by the said C. O. Garrett and the purchase by The Garrett Electric Light & Power Company of all the property, rights, privileges, rights-of-way and easements, as a going concern, of the said Garrett Electric Light & Power Company.

Upon consideration whereof, and being fully advised in the premises, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purposes of this proceeding, that the convenience of the public will be promoted by said purchase and sale of property and that the public thereby will be furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that its consent and authority for such purchase and sale of property should be granted. It is, therefore,

Ordered, That the said C. O. Garrett be, and hereby he is authorized to sell and convey to The Garrett Electric Light & Power Company, all right and title to the property and assets, as a going concern, of the Garrett Electric Light & Power Company, as the same are more fully described and enumerated in a detailed inventory filed herein, which inventory hereby is made a part of this order by reference; and said The Garrett Electric Light & Power Company hereby is authorized to purchase said property and to pay

therefor the agreed consideration of thirty-one thousand, five hundred dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

*
"

No. 1755—In the Matter of the Application of The Garrett Electric Light & Power Company for Authority to Issue and Dispose of \$100,000.00 Common Capital Stock. Prayer Granted.

(Dated September 24, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the application of The Garrett Electric Light & Power Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue common capital stock of the par value of one hundred thousand dollars, \$31,500.00 par value thereof to be issued as fully paid and at par to C. O. Garrett in full payment of the consideration for the property and assets, as a going concern, of the Garrett Electric Light & Power Company (the purchase of which, by applicant, was duly consented to and approved by order of the Commission this day made and entered in Proceedings No. 1752) and the proceeds arising from the sale of the remaining \$68,500.00, par value, of said capital stock be used, (a) \$11,000.00 for the payment to J. A. Wise, of the consideration for the property and assets, as a going concern, of the Wise Electric Company, and \$2,500.00 for the payment to J. H. Smith and A. H. Rosselet, of the consideration for the property and assets, as a going concern, of the Winchester Electric Light & Power Company (the purchase of which, by applicant, was duly consented to and approved by orders of this commission this day made and entered in Proceedings Nos. 1714 and 1754), and (b) \$55,000.00 for the construction of a central power plant and station.

Upon consideration whereof and being fully advised in the premises, the commission finds from the pleadings and exhibits filed

herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding:

(1) That said property of the Garrett Electric Light & Power Company to be acquired by the applicant is worth not less than the sum of \$31,500.00;

(2) That said property of the Wise Electric Company so to be acquired by the applicant is worth not less than the sum of \$11,000.00;

(3) That said property of the Winchester Electric Light & Power Company so to be acquired by the applicant is worth not less than the sum of \$2,500.00;

(4) That the applicant now has in contemplation the erection of a central power plant and station, the cost of which has been reasonably estimated at the sum of \$55,000.00, and

(5) That the issue of applicant's said common capital stock and the money to be procured from the sale of a portion thereof are reasonably required and necessary for the acquisition of property, to be used and useful, in the prosecution of applicant's corporate purposes, and for the construction, completion, extension and improvement of applicant's facilities,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore,

Ordered, That said The Garrett Electric Light & Power Company be, and hereby it is authorized to issue its common capital stock of the total par value of one hundred thousand dollars (\$100,000.00), and that sixty-eight thousand, five hundred dollars (\$68,500.00) par value thereof be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, That thirty-one thousand, five hundred dollars (\$31,500.00) par value of said capital stock be issued and delivered, as fully paid and at par, to one C. O. Garrett in full and final payment of the consideration for the property and assets, as a going concern, of the Garrett Electric Light & Power Company, the purchase of which by the applicant was duly consented to and approved by order this day made and entered in Proceeding No. 1753, which order hereby is made a part of this order by reference. It is further

Ordered, That the proceeds arising from the sale of the remainder of said capital stock be expended for the following purposes, and no others, to-wit:

Eleven thousand dollars to be paid to J. A. Wise as the consideration for the property and assets, as a going concern, of the Wise Electric Company, the purchase of which, by applicant, was duly consented to and approved by order, this day

made and entered in proceeding No. 1714, which order hereby is made a part of this order by reference;

Two thousand five hundred dollars to be paid to J. H. Smith and A. H. Rosselet as the consideration for the property and assets, as a going concern, of the Winchester Electric Light & Power Company, the purchase of which, by applicant, was duly consented to and approved by order, this day made and entered in proceeding No. 1754, which order hereby is made a part of this order by reference, and

Fifty-five thousand dollars to be used for the construction of a central power plant and station substantially in conformity to the detailed estimate filed herein, which estimate hereby is made a part of this order by reference.

It is further

Ordered, That the applicant make verified report to this commission, semi-annually within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock, and in reasonable detail, the expenditure of the proceeds of that part thereof which is to be sold, pursuant to the terms and conditions of this order.

No. 1745—In the Matter of the Application of The Warren & Niles Telephone Company for Consent and Authority to Issue and Sell \$75,000.00 Capital Stock. Prayer Granted.

(Dated September 18, 1919.)

This day, (after due notice to all parties in interest), this matter came on to be heard and was heard upon the application of The Warren & Niles Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and authority of this commission to issue and dispose of common capital stock of the par value of seventy-five thousand dollars, the proceeds arising from the sale thereof to be used to provide a new central exchange building, a new toll switchboard and certain additions and extensions to its aerial and underground cable systems.

Upon consideration whereof, and being fully advised in the premises, the commission finds:

(1) That the applicant has now under contemplation,

(a) The erection of a new central office building, the cost of which is estimated at the sum of \$18,000.00;

(b) The extension of its underground conduit plant and the expansion of its underground and aerial cable systems, at an estimated cost of \$35,000.00;

(c) The purchase of a new toll switchboard, the cost of which has been estimated at the sum of \$13,000.00;

(d) The construction of additional pole line and aerial cable on Woodland Avenue in the city of Warren, at an estimated cost of \$4,000.00, and

(e) The improvement of its present switchboard at an estimated cost of \$5,000.00.

(2) That the issue of applicant's said capital stock is reasonably required and the money to be procured thereby necessary for the aforesaid construction, completion, extension and improvement of applicant's facilities,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Warren & Niles Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of seventy-five thousand dollars (\$75,000.00), and that said capital stock be sold for the highest price obtainable but for not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to-wit:

The payment for the following additions, extensions and improvements to applicant's facilities, viz:

The erection of a new central exchange building on South Park Avenue, in the city of Warren, the estimated cost of which is the sum of \$18,000.00;

The construction of extensions to underground conduit system on South Street and East Market Street, the cost of which has been estimated at the sum of \$35,000.00;

The purchase of a new toll switchboard, the cost of which is estimated to be the sum of \$13,000.00;

The extension of the aerial plant on Woodland Avenue at an estimated cost of \$4,000.00. And

The alteration and improvement of the applicant's present central exchange switchboard at an estimated cost of \$5,000.00,

all as more particularly described in the statement identified as Exhibit No. 1, submitted in evidence upon the hearing of this matter, which exhibit hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock, and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1616—In the Matter of the Application of The Cincinnati and Suburban Bell Telephone Company to Buy the Property of, and The Bethel Home Telephone Company for Authority to Sell its Property. Prayer Granted.

(Dated September 10, 1919.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of The Cincinnati and Suburban Bell Telephone Company and The Bethel Home Telephone Company, (corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this Commission, of the sale, by said The Bethel Home Telephone Company, and the purchase by said The Cincinnati and Suburban Bell Telephone Company of all the property and assets of said The Bethel Home Telephone Company.

And the Commission, having heretofore found and ascertained the valuation of the several classes and kinds of property of the applicants, used and useful for the convenience of the public in the furnishing of telephone service in and about the village of Bethel, and of said property as a whole, upon which rates, tolls, charges and rentals for a merged service are to be based, and notice of such valuation having been duly given to said application and the Mayor of Bethel, Ohio, by registered letter, as provided by law, and it appearing that the consolidation of applicants' properties in and about the village of Bethel will promote the public convenience, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, the Commission is satisfied that its consent and authority for such sale and purchase of property should be granted.

The Commission further finds and determines the following rates, rentals, tolls and charges to be just and reasonable for the furnishing of a unified telephone service in and about the village of Bethel to be just and reasonable, to wit:

The charges hereunder entitle the subscriber to unlimited calls for Local Service to all stations bearing the designation of Bethel, and to unlimited calls for County Service to all stations bearing the designation of Amelia, Batavia, Bethel, Loveland, Milford, Moscow, New Richmond, Newtonsville, Terrace, Tobasco and Williamsburg, without other charge.

All rates and charges are in dollars and cents per annum, except as otherwise noted.

Within the municipal limits of Bethel and beyond these limits, within the Bethel Central Office District, up to a radial distance of one-half mile from the Central Office:: :

	Direct Line	Ex. Tol.
1. Local service:		
Business	\$18.00	\$6.00
Residence	15.00	6.00
2. County service:		
Business	\$24.00	\$6.00
Residence	21.00	6.00
Outside of the aforesaid area and within the Bethel central office district:		
Direct two-part and four-party line.		
	Loc. Service	County Service
	10-Party	10-Party Ex. Tol.
	Rural Line	Rural Line

Business, (The rates are the same as shown above, age charge	\$18.00	\$24.00	\$6.00
Residence	15.00	21.00	6.00
plus exchange line mile-			

Note.—Two-party and four-party lines, club arrangement. This service furnished only when full number of subscribers is secured. Subscriber agrees to pay for the class of service furnished where one or more subscribers withdraws from the line.

Throughout the Bethel central office district:

The rates and charges for classes of service and facilities not specifically shown in this schedule are given in a tariff (P. U. C. C., No. 1 of The Cincinnati & Suburban Bell Telephone Company) the following reference indicating the application of these rates and regulations under which more than one schedule is quoted:

Reference to tariff, P. U. C. C. No. 1.

Class of Service	Section	Paragraph	Schedule
Mileage Charges:			
Exchange lines	10	A	3
P. B. X. lines.....	10	B	3
Extension stations	10	E	3
Private Branch Exchange Systems	10	A	3
For use of desk set as a primary station in connection with any class of service, \$3.00 extra.			

It is, therefore,

Ordered, That said The Bethel Home Telephone Company be, and hereby it is authorized to sell and convey to said The Cincinnati and Suburban Bell Telephone Company all of its property and

assets, as more fully enumerated and described in the several exhibits submitted in this proceeding; and said The Cincinnati and Suburban Bell Telephone Company hereby is authorized to purchase and acquire said property and assets and to consolidate the same with its present facilities and system in and about the village of Bethel, Ohio. It is further

Ordered, That upon the acquisition of said property, said The Cincinnati and Suburban Bell Telephone Company may establish, impose, charge and collect for furnishing telephonic service in and about the village of Bethel, Ohio, rates not in excess of the rates and charges hereinbefore found and determined to be just and reasonable. It is further

Ordered, That said The Bethel Home Telephone Company forthwith file with this Commission a schedule withdrawing from the furnishing of service. It is further

Ordered, That the finding of the Commission in relation to the service of the applicants shall not be binding upon this Commission in any future proceeding regarding said subject.

*

No. 1749—In the Matter of the Application of Homer E. Marlatt and Harley C. Weaver for Such Consent and Approval of the Commission as May be Necessary to Enable Them to Respectively Purchase and Sell Certain Telephone Property. Prayer Granted.

(Dated September 9, 1919.)

This day, (the Commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of Homer E. Marlatt, of Sugar Tree Ridge, Ohio, and Harley C. Weaver, of Mowrystown, Ohio, asking the consent to and approval, by this Commission, of the purchase by the said Homer E. Marlatt and the sale, by the said Harley C. Weaver, of the telephone system at Mowrystown and Buford, Highland County, Ohio, which the said Harley C. Weaver, as sole owner, has operated under the trading name of The Citizens Telephone Company:

Upon consideration whereof, and being fully advised in the premises, the Commission finds, from the pleadings filed herein and its independent investigation thereupon and for the purpose of this proceeding, that the convenience of the public will be promoted thereby and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that its consent and authority for such purchase and sale of said property should be granted. It is, therefore,

Ordered, That the said Harley C. Weaver, of Mowrystown, Ohio, be, and hereby he is authorized to sell and convey to the said Homer E. Marlatt, of Sugar Tree Ridge, Ohio, the telephone system in and about Mowrystown and Buford, Highland County, Ohio, which the said Harley C. Weaver heretofore has operated under the trading name of The Citizens Telephone Company; and the said Homer E. Marlatt hereby is authorized to purchase and acquire the same. It is further

Ordered, That said parties forthwith, upon the sale and transfer of said property, file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

3

No. 1758—In the Matter of the Joint Application of The Cincinnati and Suburban Bell Telephone Company and The Hamilton Home Telephone Company for Authority to Establish Physical Connection and Interchange Toll Service. Prayer Granted.

(Dated September 9, 1919.)

This day this matter came on to be heard, and was heard, upon the joint application of The Cincinnati and Suburban Bell Telephone Company and The Hamilton Home Telephone Company, (corporation duly organized and existing under and by virtue of the laws of Ohio), asking such consent and authority of this Commission as will enable them to make and enter into a certain contract, or articles of agreement, providing, among other things, for the establishment of a physical connection between their respective systems and the interchange of toll service pending the consummation of the merger of their physical plants:

Upon consideration whereof, and being fully advised in the premises, the Commission finds, from the pleadings filed herein and the evidence presented upon the hearing thereof, that the con-

venience of the public will be promoted thereby and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the establishment of said physical connection and the interchange of toll service by the application should be granted. It is therefore,

Ordered, That said The Cincinnati and Suburban Bell Telephone Company and said The Hamilton Home Telephone Company be, and hereby they are authorized to establish a physical connection between their respective systems and to interchange toll service thereby as provided by law. It is further

Ordered, that said applicants forthwith file with this Commission schedules providing rates, rules and regulations for said interchanged toll service. It is further

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this Commission in any future proceeding involving said matters, nor shall anything herein be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service.

**STATEMENT OF OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.,
REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24,
1912, OF DEPARTMENT REPORTS**

Publisher, The Nemar Publishing Co., Columbus, Ohio; Editor, L. M. Rodenfels, 67 East Long St.; Business Manager, C. W. Wallace, 67 East Long St.; Owners, The Nemar Publishing Company, C. W. Wallace, 67 East Long St., Columbus, Ohio; L. M. Rodenfels, 67 East Long St., Columbus, Ohio; W. T. Hohnhorst, 63 West Eleventh St., Covington, Ky.; J. D. Dunnigan, 67 East Long St. Known bondholders, mortgagees and other stockholders holding one percent or more of total amount of bonds, mortgages, or other securities, none.

C. W. WALLACE, Business Manager,

Sworn to and subscribed before me this 1st day of October, 1919.

L. M. RODENFELS,

(Seal)

Notary Public, Franklin County, Ohio.

My commission expires January 12, 1922.

ATTORNEY GENERAL

In all Cases of Injury, Previous to the Date that the Amendment to Section 1465-79 General Code, Increasing the Amount to be Allowed Under the Workmens Compensation Act, Became Effective, Compensation Must be Based Entirely upon the Law in Effect on the Date of Injury. This is True Regardless of the Time that the Claim is Considered by the Industrial Commission and also if Some of the Disability is Suffered After Said Amendment Became Effective—The Amendment to the Workmen's Compensation Act Limiting the Time Within Which an Application May be Filed for Compensation Thereunder, will not Effect Claims for Injuries Which Occur Prior to the Date When Such Amendment Became Effective.

No. 643—(Opinion Dated September 22, 1919.)

Industrial Commission of Ohio, Columbus, Ohio.

Gentlemen: I am in receipt of your communication requesting my opinion upon the following questions::

“First, the amendment to Section 1466-79 raises the maximum weekly rate of compensation from \$12.00 to \$15.00 but does not specifically state whether it will apply only to injuries actually received on and after August 14, 1919, or whether it will relate and apply to injuries sustained prior to the above mentioned date where disability continued beyond said date. We should also like to have your opinion as to whether such amendment will apply to cases of injury sustained prior to August 14, 1919, which may be reopened after that date for the allowance of further compensation.

We should also like to have your opinion on Section 1465-72a, which contains no provision as to whether it will cover cases of injury sustained more than two years prior to August 14, 1919, or whether it will only apply to cases of injury which arise on and after August 14, 1919, and in which no report is made until more than two years after that date.”

Your first inquiry relates to the amendment of section 1465-79 General Code (108 O. L. 313), which is as follows::

“In case of temporary disability, the employe shall receive sixty-six and two-thirds per cent. of his average weekly wages so long as such disability is total, not to exceed a maximum of fifteen dollars per week, and not less than a minimum

of five dollars per week, unless the employe's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue for more than six years from the date of the injury, nor to exceed three thousand, seven hundred and fifty dollars."

Section 26 General Code is pertinent to this question, and reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

In considering your first question in connection with this section, injuries received previous to the date the amendment of section 1465-79 became effective would be divided into two classes, to wit:

(1) Those injuries which were received prior to the date that said amendment went into effect and for which application for compensation had been made prior thereto.

(2) Those injuries which were received prior to said date but for which no application had been made to you for compensation until after the date that said amendment became effective.

Section 26 General Code just quoted, however, clearly provides that in either case this amendment shall in no manner affect the rights of the parties unless so specifically expressed by the legislature at the time the amendment was passed.

An examination of the act fails to disclose any such provisions and, therefore, in all cases of injury previous to the date that the amendment became effective compensation must be based entirely upon the law in effect on the date of injury, and the amendment will in nowise affect the amount of compensation due them. This is also true regardless of the time that their claim is considered by you, and it is true even though some of the disability is suffered after the said amendment became effective. This is because their rights are based upon the law in force at the time of the injury, which is the time when their right of action or to receive compensation accrues.

Relative to your second inquiry, as to the effect of supplementing section 1465-72 General Code by adding section 1465-72a, I find that this supplemental section is as follows:

"In all cases of injury or death, claims for compensation shall be forever barred, unless, within two years after the injury or death, application shall have been made to the industrial commission of Ohio or to the employer in the event such employer has elected to pay compensation direct."

We must again consider section 26 General Code as quoted above in connection with this inquiry, and in addition thereto I find that the courts have passed upon the question of limitations of action. Previous to the time at which this amendment became effective there was no limitation at all placed by statute upon the time when an injured party might make application for disabilities sustained on account of an injury received in the course of and arising out of his employment. This amendment requires the application to be made to you, or to the employer in case the employer is carrying his own risk, within two years after the injury or death. I find that the authorities are unanimous in holding that a limitation is not placed upon an accrued right of a party by limiting the time in which such a naction may be commenced.

"Where defendant in an action to enforce stockholder's statutory liability died, pending suit, in October, 1895, and, without revivor in the name of the executor of deceased, appointed in October, 1895, a judgment was taken against deceased defendant May 20, 1899, an action by a receiver appointed to collect the judgments rendered in such stockholder's action, was filed May 16, 1900, against the heirs of such deceased judgment debtor, is within Sec. 6113, Rev. Stat., as it existed October, 1895, providing a four-year limitation within which suits might be brought against an executor, and not within the amended statute of April 8, 1898, reducing the limitation to two years."

1st Syllabus—Bevitt, Receiver, vs. Diehl, 12 Ohio Dec., 383.

The right of an employe to file a claim was not limited to any period of time previous to the amendment. The new act places a limitation thereon. If this could be made to apply to injuries sustained previous to the date this amendment became effective, it might entirely deprive him of any right for the reason that he may have been injured more than two years previous to the date that the amendment became effective and all rights thus destroyed. The courts have held, however, that an amendment did not limit

this existing right if the legislature did not attempt to do so at the time of enacting the legislation, which they did not do in this act.

I also find:

"The right to bring and maintain such action (to recover for an injury) 'within four years,' having accrued before that date, under existing law, became a vested right, and is not curtailed, abridged, or in any way affected by subsequent legislation, unless it is remedial, and not then unless express provision therefor is contained in the amending act."

2d Syllabus—Shuman vs. Drayton, 14 O. C. C., 328.

And also—

"Where rights have fully vested under a section these rights are not affected by a repeal of the section."

State ex rel. vs. Purcell, 31 O. S., 352, at p. 356.

I also note that your letter refers to "August 14th" as the date upon which these amendments and supplements became effective. I find that these were a part of House Bill No. 424, which was filed in the office of the Secretary of State on May 16, 1919.

Article II, Section 1 of the Constitution provides:

"No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided."

The term "except as herein provided" refers to emergency laws passed by the legislature. House Bill No. 424 was not an emergency act. In computing the time you can not include the day it was filed with the secretary of state and it must remain there ninety days before it becomes effective. Therefore, this act did not become a law until August 15, 1919.

SUPREME COURT

The State, ex rel. The Moore Oil Co., vs. Dauben, Building Inspector
Construction—Penal Statutes or Ordinances Strictly Construed,
When—Restrictions on Trades, Occupations or Businesses—Ex-
emptions Liberally Construed, When—Ordinance Prohibiting
Gasoline and Oil Filling-stations—Consents of Property Owners
Unnecessary, When—Repair or Remodeling of Existing Struc-
ture—Mandamus—Refusal of Permit by Building Inspector.

1. Statutes or ordinances of a penal nature, or which restrain the exercise of any trade or occupation or the conduct of any lawful business, or which impose restrictions upon the use, management, control or alienation of private property, will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed; exemptions from such restrictive provisions are for like reasons liberally construed.

2. Under the provisions of a city ordinance making it unlawful to locate, build, erect, construct, maintain or operate a public gasoline or oil filling station in a residence district without first procuring the written consent of two-thirds of the owners of property within a specified distance therefrom, but exempting any owner or operator of any such station theretofore erected, such owner is not required to procure the consent of property owners before he may repair, remodel or rebuild such pre-existing gasoline or oil filling station.

3. Where an application is made by the owner of such preexisting station to the city building inspector for a building permit, and such inspector finds the plans and specifications submitted to be in conformity to law and the ordinances of the city, and approves them, but refuses the permit on the sole ground that the consents of property owners have not been procured and filed, a writ of mandamus will issue upon the application of the owner requiring the issuance of a building permit.

No. 16140—(Decided April 2, 1919.)

Error to the Court of Appeals of Franklin county.

The relator, The Moore Oil Company, has maintained a gasoline filling-station at the northwest corner of Twenty-first and Broad streets in the city of Columbus since May 1, 1915, and since November 4, 1915, has been the owner of the tract whereon its filling-station is located. It has a driveway entering from Twenty-first street and the alley in the rear of its premises, leading to its building, and thence to Twenty-first street near Broad. On March 26, 1917, preparatory to the erection of a new building and the material extension and enlargement of its plant, the company procured from the director of public service of the city permission to construct an additional driveway from Broad street, and submitted

to the building inspector the plans and specifications for the improvements to be made by it, which included the erection of a one-story brick building, with rest rooms, lavatories and comfort stations, to replace the one-story metal building theretofore used by it, also the installation of two underground steel tanks of 4000 gallons capacity each, instead of one of 1000 gallons and two of 500 gallons capacity each, and also additional pumps, and requested the issuance of a building permit.

The plans and specifications for the proposed improvement were approved by the city building inspector who stated in writing, in response to said application of the plaintiff in error, that he found said plans and specifications to be in compliance with all laws and ordinances, except that ordinance No. 28932 of the city had not been complied with in the respect that said company had not procured and submitted with its application the written consent of two-thirds of the owners of the property abutting on said street for a distance of 500 feet in each direction from the median line of such proposed oil filling-station according to the frontage on both sides of the street, and that solely for that reason the application of said company for a building permit was refused.

Ordinance No. 28932 of the city of Columbus referred to in the communication of the city building inspector is as follows:

"Be it ordained by the council of the city of Columbus, State of Ohio:

"Section 1. That it shall be unlawful for any person, firm or corporation for themselves or as agents, renters or lessees, to locate, build, erect, construct, maintain or operate any public gasoline or oil-filling station or sales depot on or within 187½ feet from the curb line of any street in the city, or to construct or maintain a driveway from the street over the curb and sidewalk to such station or depot, when three-fourths of the buildings on both sides of the street for a distance of five hundred (500) feet in either direction from the proposed location of each wall of such oil-filling station or sales depot are used exclusively for residence purposes, without first securing the written consent of two-thirds (2/3) of the owners of property abutting on the street for a distance of 500 feet in each direction from the median line of such proposed oil-filling station or sales depot, according to the frontage on both sides of the street.

"Sec. 2. Any person, firm or corporation, or any agent, renter or lessee, of any such person, firm or corporation who shall violate

any of the provisions of this ordinance shall be fined not less than \$100 nor more than \$500 for each offense, and each week of continued violation of this ordinance shall constitute a separate offense after the first prosecution has begun.

"Sec. 3. This ordinance shall take effect and be in force from and after the earliest period allowed by law, but shall not apply to or be operative against any owner or operator of any public gasoline or oil-filling station or sales depot heretofore erected unless two-thirds of the owners of property for whose consent this ordinance makes provision file with the city clerk within thirty days after this ordinance takes effect their written protest against the further operation of such station or depot."

The Moore Oil Company instituted this proceeding in mandamus in the court of appeals, wherein it sought an order requiring the defendant to issue to the relator such building permit for the construction of its proposed improvement in accordance with the plans theretofore submitted to and approved by the defendant.

Issue was made by petition, answer and reply. The defense claims that the proposed improvement involves the erection of a new structure and is prohibited by the terms of Section 1 of said ordinance, while the relator contends that it is exempt from the operation thereof and further asserts that said ordinance is in conflict with certain provisions of the constitution of the state and also of the United States.

Upon hearing, the Court of Appeals refused the writ prayed for, and thereupon error was prosecuted to this court to procure a reversal of that judgment.

Mr. James E. Robinson and Messrs. Webber, McCoy & Jones, for plaintiff in error.

Mr. H. L. Scarlett, city attorney; Mr. Joseph Godown, assistant city attorney; Mr. James M. Butler; Mr. Harley E. Burns and Mr. L. L. Boger, for defendant in error.

Matthias, J. The primary question involved in this case is whether the structure proposed to be erected by the relator comes within the inhibition of ordinance Number 28932 of the city of Columbus. That ordinance was passed by the council of the city of Columbus on July 19, 1915, and approved by the mayor of the city on July 23, 1915. At that time the relator was maintaining and operating a gasoline and oil filling-station at the location now in question, being a lot at the corner of Twenty-first and Broad streets in said city, with a frontage of seventy feet on Broad street and extending to the alley, a depth of about one hundred and eighty-seven

feet. For such purpose the relator had theretofore constructed and was then using in the operation of such station a one-story metal building, with underground gasoline tanks having a total capacity of two thousand gallons. It now proposes to erect a new building on the location of the old and provide further facilities, including another driveway, and increase its capacity by the construction of new and larger gasoline tanks and additional pumps. Pursuant to its plans for such improvement, and as an incident thereto, relator had caused the removal of its metal building to make way for the new structure. But there was at no time an abandonment of its plant or a discontinuance of its business; on the contrary its business was continued, and the contract for the new improvement provided for the uninterrupted continuance thereof. Relator has therefore continuously maintained and operated a gasoline and oil filling-station at that location since about May 1, 1915.

Statutes or ordinances of a penal nature, or which restrain the exercise of any trade or occupation or the conduct of any lawful business, or which impose restrictions upon the use, management, control or alienation of private property, will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed; exemptions from such restrictive provisions are for like reasons liberally construed. 36 Cyc., 1180, and cases cited, and 2 Sutherland on Statutory Construction (2 ed.), Section 356.

The ordinance in question here makes it unlawful to locate, build, construct, erect, maintain or operate any public gasoline or oil-filling-station on or within 187½ feet of the curb line of any street in a residence district of the city, or to construct or maintain a driveway from the street over the curb and sidewalk to such station, without first securing the written consent of two-thirds of the owners of property abutting on the street for a distance of 500 feet in each direction from the line of such proposed gasoline or oil filling-station. This is the substance of Section 1 of the ordinance, but Section 3 expressly provides that the ordinance shall not apply to or be operative against any owner or operator of any public gasoline or oil filling-station theretofore erected, unless within thirty days after the taking effect of such ordinance two-thirds of the owners of property within the specified distance file with the city clerk their written protest against the further operation of such station.

There can be no contention that the relator was in any wise precluded from continuing the operation of its plant as constructed

and in operation prior to the passage of such ordinance. It is clearly exempt from the provisions of Section 1 by the terms of Section 3 of the ordinance. It does not appear from the record that within thirty days subsequent to the passage of the ordinance protests were filed against the further operation of the station of the relator, hence we have not here for consideration the validity of that provision in Section 3.

It is contended by the defendant that the provisions of Section 1 are applicable and preclude the improvements proposed to be made by the relator. Where the lawmaking body declares its own intention in the enactment of a particular law, or defines the sense of the words employed, it is within the exercise of its legislative power, and its own construction of its language should be followed. (2 Sutherland on Statutory Construction [2 ed.], Section 358.) If there could otherwise be any doubt as to the exemption of a filling-station in operation at the time of the passage of the ordinance from the terms thereof, that doubt is completely dispelled by a fair consideration of the language of Section 3, for the legislative body there construed its own provision and did not leave the interpretation thereof to the courts. The effect of the exemption clause in Section 3 is the same as if Section 1 itself contained the unconditional provision that the requirements thereof should not apply to or be operative against any owner or operator of a filling-station erected previous to the passage of the ordinance.

For the purpose of an interpretation of Section 1 it is entirely immaterial whether or not the latter part of Section 3 is invalid, as being an unlawful delegation of legislative power. The provision excepting an owner or operator of a filling-station theretofore erected is as clear and explicit as is the provision prohibiting the erection and maintenance of such stations without procuring the designated consents. Presumably the prohibition would not have been enacted without the exemption, and the one cannot be enforced and the other disregarded. They must be construed together, and, as we have seen, the clause granting exemption from penal and restrictive provisions must be liberally construed. The presumption obtains that the ordinance is to operate only prospectively: but the legislative body was not content to rest upon that presumption, for by the exemption clause inserted it clearly indicated its plain purpose that the ordinance should have application and operation only prospectively. It prohibits the erection and maintenance of a public gasoline or oil filling-station, but excepts any owner or operator of a station theretofore erected. The relator is the owner of a public

gasoline and oil filling-station theretofore erected, and therefore under the very terms of this ordinance may continue the maintenance and operation thereof. Requirements as to the method of construction and maintenance of such buildings and plants are prescribed by other laws and ordinances and admittedly have been met and complied with. It is not a particular kind or class of building or structure that is prohibited or sought to be regulated by this ordinance, but rather the use of the location as a public gasoline or oil filling-station. Here it appears that its character as such had been fixed prior to the passage of this ordinance, which does not in terms declare such places nuisances. They are thereby permitted to exist and continue. The alterations and improvements proposed do not change the character of this station, nor the use thereof, otherwise than to enlarge and somewhat improve it, as the record clearly shows. There is no language in this ordinance requiring new consents whenever it is desired to alter or enlarge a station erected subsequent to the passage of the ordinance, with the specified consents of property owners, nor prohibiting the making without procuring such consents, of such alterations and improvements of a station established and maintained prior to the passage of such ordinance.

The construction of the ordinance contended for by the defendant would preclude the reinstallation of a removal portion of such station and prevent restoration of a building damaged or destroyed by fire or otherwise. If changes or improvements of such station were to be forbidden, presumably language would have been used making such further restrictions. The effect of language employed in restrictive provisions will not be extended by construction, but the operation of such provisions will be limited by the natural import of the terms employed. Section 1 of this ordinance seems to have been designed expressly to apply only to gasoline or oil filling-stations erected and established after the passage of the ordinance, and when limited, as it is, by the provisions of Section 3, can have no other application.

The judgment of the Court of Appeals is reversed and judgment rendered for plaintiff in error.

Judgment reversed and judgment for plaintiff in error.

Nichols, C. J., Jones, Johnson, Donahue, Wanamaker and Robinson, JJ., concur.

SECRETARY OF STATE

NEW CORPORATIONS.

Bryan Realty Co., Bryan, \$25,000. R. O. Stine, C. H. Culbertson, H. S. Winkler, Charles M. Wertz, A. L. Shaffer.

Cranberry Oil and Gas Co., New Washington, \$25,000. Wm. Siefert, J. F. Ross, John Siefert, Cantwell Lash, D. F. Heiser, M. N. Schill.

Alkay Motor Supply Co., Cleveland, \$10,000. Alfred M. Kronberg, Eugene E. Wolf, I. Shenker, Julius Bloomberg, Lewis Drucker.

American Asbestos Products Co., Cleveland, \$25,000. J. Frederick, Charles S. Skinner, A. B. Richards, B. I. Blair, S. I. Powell.

Snider Investment Co., Cleveland, \$10,000. G. B. Brown, E. O. Kitchin, G. F. Steuben, H. S. Card, J. E. Haag.

Stein Drug Co., Cleveland, \$5,000. Julius Bloomberg, David G. Stein, Eugene E. Wolf, I. Shenker, Lewis Drucker.

Durable Products Co., Cleveland, \$5,000. Charles Rosenblatt, S. Halama, M. S. Cerrezih, George Palda, A. Kaplan.

Estates Land Co., Cleveland, \$150,000. James H. Griswold, Herbert D. Palmer, John A. Hadden, M. A. Anderson, J. S. Riggs.

Ravenna Aerial Co., Ravenna, \$50,000. Philip Greenberg, W. A. Case, Bert Redmond, C. R. Francies, C. W. Shively.

D. & D. Battery Service Co., Columbus, \$25,000. Leroy Dobyns, Harry C. Godown, Owen L. Jenkins, Beatrice Godown, Martha Dobyns.

Buckeye Lake Hotel Co., Buckeye Lake, \$360,000. Thomas S. Rhodes, Herbert C. Stowell, J. E. Butler, John W. Glass, Perle H. Rhodes.

National Realty and Mortgage Co., Cleveland, \$100,000. Paul Kurdziel, B. Majewski, John G. Konlarski, M. B. Barszczewski, Joseph J. Jablonski.

Kenton Amusement Co., Kenton, \$75,000. George H. Lingrel, D. C. Fox, W. H. Kaiser, Wm. Kraus, Henry Yost.

Morrison-McCarty Construction Co., Cincinnati, \$10,000. Henry E. Beebe, Charles Hopping, D. T. Hackett, Theo. W. Meader, E. J. Murphy.

Crestline Ice Co., Crestline, \$35,000. C. A. Simonton, M. J. Long, Louis W. McMahon, M. J. Strauch, Peter C. Frye, Paul F. Frank.

Custom Leather Co., Ashtabula, \$50,000. John Reid, H. Hill, F. W. Klinbeck, J. W. McKay, John W. McCay.

Eagle Box Board & Paper Mill Co., Toledo, \$50,000. Gilbert L. Smith, C. H. Howard, Gilbert L. Smith, Jr., Walter M. Mayer, Leslie A. Smith.

G. & G. Manufacturing Co., Cincinnati, \$10,000. Jos. Greenbaum, Ernst Gevelhoff, Isaac Levi, Davis Levi, Thorne Baker.

American Crucible Products Co., Elyria, \$50,000. L. B. Fauver, B. L. Farmer, F. L. Hamel, J. W. Schmauch, H. A. Daniels.

Hearne-Taylor Co., Elyria, \$10,000. Russell Allen Hearne, Carl L. Taylor, Essie Hearne, E. M. Miller, A. E. Taylor.

Lancaster Packing Co., Lancaster, \$85,000. George M. Schmidt, Christ Kautz, Charles G. Kull, Anna M. Schmidt, Katie Kautz, Bertha Kull.

Salem Home Building Co., Salem, \$200,000. R. W. Campbell, A. H. Kennedy, J. S. McNutt, F. R. Pow, R. C. Kridler.

Scioto Motors Co., Columbus, \$50,000. I. L. Goldberg, Walter Bieling, Harry Goldberg, Arthur Goldberg, William H. Overman.

Valley Electric Co., Malvern, \$10,000. S. G. Deckman, F. E. Hoffee, H. C. Ross, L. D. S. Klotz, C. I. Kirkpatrick, John Kriderr, R. T. Spratt.

Superior-Mayfield Garage Co., Cleveland Heights, \$5,000. A. R. Silsby, George Worden, A. A. Brockway, William G. Phare, I. L. Scharff.

Finnish Workers Building Co., Warren, \$25,000. Everitt Walli, John Karlin, A. H. Bjorn, Abel Dukis, S. Kuzele.

Beck Amusement Co., Akron, \$100,000. L. O. Beck, V. H. Blount, Dow W. Harter, K. V. Grow, Charles C. Benner.

Cleveland Printing Ink Co., Cleveland, \$25,000. Roscoe M. Ewing, Jas. L. Lind, W. F. Galbraith, F. L. Phipps, Wm. J. Silverside.

Rayon Rubber Co., Ravenna, \$300,000. R. A. Stilwell, H. K. Neiswanger, S. B. Durand, F. A. Aumann, D. W. Maxon.

Consolidated Iron-Steel Manufacturing Co., Cleveland, \$1,125,560. A. V. Cannon, L. C. Spieth, H. A. Beckett, H. O. Mierke, L. A. O'Neill.

Massillon Merrill System Co., Massillon, \$30,000. Oscar D. Miller, Geo. H. Freeborn, Homer M. Johnson, Wm. L. Swanson, W. A. Daugherty.

Barnebey-Cheney Engineering Co., Columbus, \$25,000. Oscar L. Barnebey, M. B. Cheney, C. E. Burnham, Hugh M. Bennett.

My Once In a While Co., Cleveland, \$300. J. H. Schultz, Q. H. Findley, M. I. Buelow, I. M. McDonough, C. A. Burns.

Whitewater Valley Power Co., Cincinnati, \$1,000. Charles A. Hinsch, Joseph L. Lackner, Jesse D. Lyon, Jos. S. Graydon, Edward A. Bosmer.

99-Year Lease and Realty Co., Cleveland, \$10,750. John F. Hatton, Oliver I. Lindberg, Mark H. Blakeley, A. M. Olds, Alfred G. Clark.

Mutual Hog Breeders' Co., Cleveland, \$10,000. Luke F. Brock, Wm. A. Daly, John J. Brock, Lewis A. Oster, Hugh Carney.

J. T. Wright Co., Cincinnati, \$50,000. Joseph T. Wright, William F. Eakle, Stephen W. Jones, E. C. Costigan, Samuel E. Hilles.

Homesite Realty and Development Co., Akron, \$50,000. John E. Sickman, Charles Hoffmeyer, Robert M. Mairret, Hazel Clark, T. W. Kimber.

Cleveland Notion Co., Cleveland, \$50,000. Leo W. Ulmer, M. McDowell, Louis R. Lanza, S. A. Ryan, Charles Rosenblatt.

Cober-Richards Construction Co., Marietta, \$15,000. J. D. Cober, Marl J. Richards, E. A. Williams, R. L. Cober, James H. Warburton.

Danas Brothers Realty Co., Akron, \$5,000. Christ Danas, J. H. Boyle, Charles Danas, D. G. Hay, Lottie I. Boyle.

D. Levine Co., Cleveland, \$10,000. S. Q. Kerruish, D. Levine, N. Levine, I. M. Harrival, L. Weinacht.

East First Auto Service Co., Dayton, \$10,000. J. H. Lippincott, Earl T. Willis, W. D. Johnson, A. C. Jackson, A. W. Schulman.

William Coale Development Co., Warren, \$1,000,000. Wm. Coale, Geo. W. Hunter, A. F. Steele, M. J. Downer, L. B. Kennedy.

Commercial Realty Sales Co., Youngstown, \$24,000. Adolph Glick, Ralph Parilla, Henry Gross, Phillip Carosella, Joseph Carosella, William Zell.

Randall Manufacturing Co., Cleveland, \$25,000. F. B. Guyon, Thorpe McHenry, E. G. Guthery, B. J. Guthery, H. M. Kodet.

Sam Bellman Co., Toledo, \$100,000. George W. Ritter, Larry Bevan, M. M. McGowan, R. M. Holman, Lee H. Schminck.

Best Value Realty Co., Cleveland, \$10,000. J. H. Ballard, M. M. Groudie, K. C. Junke, R. A. Kennedy, A. F. Cook.

American Paper Tube Co., Cincinnati, \$10,000. Henry L. Korb, Cora E. Korb, Harold W. Ahlering, Edna Baum Ahlering, Arthur L. Wolf.

Delaware Sucker Rod Co., Delaware, \$10,000. William McKenzie, F. H. Said, J. S. McKenzie, E. R. Lazear, W. C. Morton.

J. T. Smith Co., Cleveland, \$25,000. J. T. Smith, Jay T. Smith, Henry Johnson, Albert Schwalm, L. R. Smith.

Ohio Lead Co., Lisbon, \$100,000. James T. Kennedy, Robert M. Pater-son, Bert Burns, F. M. Williard, L. R. Cope, E. K. Kennedy.

Textile Building Co., Cleveland, \$5,000. James H. Hooke, S. L. Bernstein, Frank J. Fiesinger, Charles Sands, A. J. McGarrell.

C. C. Florida Co., Toledo, \$100,000. L. B. Davenport, Alfred Kelley, Chas. Follett, W. B. Stewart, L. C. Wykoff.

Byers-Cargill-Dawson Co., Columbus, \$10,000. Robert C. Byers, Lawrence W. Gargill, John W. Dawson, Edward D. Howard, Harriet Byer.

Bass Lake Reserve Co., Chardon, \$55,000. Joseph A. Schlitz, K. Wing, Tracy H. Duncan, M. E. Ordner, F. Carlin.

Ukranian Realty Co., Youngstown, \$100,000. Mike Adamofsky, Harry Newinski, John Choich, Onufer Svatohko, Wasyl Furman.

Ravenna Laundry and Cleaning Co., Ravenna, \$10,000. F. D. Allman, S. F. Allman, M. E. Myers, C. F. Day, W. J. Hotchkiss.

West 25th-Scranton Y Garage Co., Cleveland, \$10,000. A. J. Brack, Henry F. Hellman, Jr., Pearl F. Brack, Katherine Hellman, Henry F. Hellman.

Lee Oil and Gas Co., Columbus, \$12,000. Jarod P. Bliss, E. E. Follmer, Max Topper, John Bass, I. L. Goldberg.

Eagle Grain Co., Hoytville, \$15,000. Oswald C. Robinson, May Shane, Peter P. Smith, Dan B. Spitler, Samuel A. Jones.

Elite Music Co., Columbus, \$50,000. Harry C. Patton, Ellen Patton, Carl S. Wilkins, Lorraine Wilkens, Albert M. Calland.

Backus Co., Cleveland, \$25,000. Russell C. Backus, H. C. Quigley, C. U. Quigley, V. G. Quigley, J. Krieger.

McMillan Brothers Co., Dayton, \$20,000. Everett E. McMillen, Wesley McMillen, Gaylord T. Heinz, Chas. H. Kumler, Virgil Schaeffer.

Superior-Mahl Co., Cleveland, \$50,000. C. A. Alexander, I. M. McDonough, C. R. Cross, Edward C. Daoust, D. R. Wilkens.

Reno Improvement Co., Toledo, \$5,000. Rachel Reno, Henry Reno, Howard A. Hendricks, Joseph A. Eger, Zale A. Reuben.

Perfection Bread Co., Lorain, \$12,500. James F. Martin, Netta A. Babinec, Peter E. Klein, Russell E. Heimberger, Thomas E. Newcombe, Roge Boyert.

Cleveland Trinidad Chocolate Co., Cleveland, \$1,500. Roscoe M. Ewing, James L. Lind, E. L. Heasley, H. H. Snyder, Charles L. Romaine.

Anderson Rolled Gear Co., Cleveland, \$5,000. H. N. Anderson, G. F. Lewis, M. M. Feldner, J. G. Fogg, A. O. Dickey.

Burbank Equity Exchange Co., Burbank, \$35,000. Ira Badger, Clyde Tanner, Charles F. Martin, L. F. Orr, W. A. Parmenter.

Elyria Welding Co., Elyria, \$5,000. Charles Beardslee, F. A. Stetson, F. E. Moore, A. C. Corfman, F. E. Stetson.

Ohio Standard Coal Co., Zanesville, \$50,000. Arthur W. Sieglaff, H. A. Taylor, Gus G. Katsampes, H. A. Sharpe, D. S. Goldman, P. H. Tannehill.

Automotive Service Co., Cleveland, \$200,000. Camble C. Silverthorn, Samuel Potter Burrill, C. A. Gattison, George Weymark, C. A. Bowman.

Cor-Ren Coal Co., Nelsonville, \$50,000. Harry Kelley, Emma Kelley, John Hilton, Sr., Mrs. Susie Hilton, Clell Douglas.

Metropolis Savings and Loan Co., Cleveland, \$1,000,000. A. S. Kraus, Max Amster, Emil M. Friedman, Stephan C. Bryson, Martin Thomas, Frank Smetana.

Highland Hog Feeder and Supply Co., Hillsboro, \$3,000. W. R. Lukens, Charles F. Gallagher, A. T. Pence, A. B. Simpson, Joseph Cavay.

Tri-State Rubber Co., Cincinnati, \$15,000. Stephen M. Denison, Robert B. Wise, Henry S. Rauh, Joseph A. Lugar, Samuel I. Lipp.

Sanitary Damp Wash Co., Cleveland, \$10,000. George R. McKay, W. A. Congalton, M. O. Boher, S. S. Duncan, Robert White.

Printers' Service and Composition Co., Cincinnati, \$10,000. John W. McIlwain, Alfred J. Gronwaldt, Remig F. Stoesser, William H. Butke, Edward A. Ohm.

Riccelli Cone and Candy Co., Sandusky, \$25,000. Ciro S. Riccelli, Thos. S. Amato, Wm. Schoeneman, Albert H. Ritter, Paul Krause.

Crystal Park Building Co., Canton, \$10,000. Wendell Herbruck, H. Nelius, G. B. Kellogg, A. R. Ackerman, Frank B. Melchior.

Ohio Sign Co., Cleveland, \$10,000. Jos. Joseph, Jack Schildhouse, Leonard J. Cogan, Wayne E. Carpenter, W. P. Moore.

Canton-Akron Realty Co., Canton, \$200,000. Henry Falla, Fred Lansinger, Lehr E. Welker, William A. Byrider, Frederick L. Bambach.

Del Monte Realty Co., Columbus, \$100,000. Philip Lindenberg, Otto H. Lindenberg, G. W. Lindenberg, Philip H. Lindenberg, Clara C. Lindenberg.

Shuey Realty Co., Springfield, \$5,000. Edwin L. Shuey, Effie M. Shuey, Edwin L. Shuey, Jr., Sarah C. Shuey, Amy S. Bookwalter, Alfred G. Bookwalter.

W. D. Buchanan Co., Greenville, \$60,000. W. D. Buchanan, Adelbert Martz, J. G. Berthold, Peter Mayer, C. H. Buchanan.

Maymar Apartment Co., Canton, \$190,000. Ed. L. Smith, V. L. Ney, Maynard L. Smith, G. William Hildebrandt, Fred Baker.

Kanawha Oil & Gas Co., Ashland, \$150,000. L. M. Matthews, J. E. Matthews, H. E. Matthews, G. O. Chitton, J. E. Chitton.

Merit Construction Co., Cleveland, \$7500. A. V. Cannon, O. O. Vrooman, H. O. Mierke, L. A. O'Neill, H. M. Dwyer.

Financial Appraisal Co., Dayton, \$10,000. Hugh E. Wall, C. L. Hardman, H. Sherman Lane, George E. Weir, R. G. Corwin.

DEPARTMENT REPORTS

Orris Coal Co., Zanesville, \$10,000.
Otto J. Raile, Pearl H. Raile, R. A. Hutchinson, E. R. Meyer, D. C. Danford.

Pure Beverage Co., Toledo, \$5,000.
P. K. Overmeyer, O. W. Curtis, A. H. Drayer, M. A. Foster, J. H. Kerbil.

Rex Oil & Gas Co., Utica, \$50,000.
William Earl Moxley, J. Rex Lee Bell, George J. Moxley, James Leroy Mathias, Charles Wm. French.

W. H. Fagaley Upholstering Co., Cincinnati, \$25,000. W. H. Fagaley, H. G. Hightower, George W. Cowles, Catherine E. Rolandelli, Dawson E. Bradley.

Walhonding Farmers' Grain Co., Walhonding, \$30,000. C. B. Ogle, Wm. Lapp, E. O. Rodehaver, Joseph S. McVey, Thomas J. Clark, C. S. McFarland.

Columbus Rotary Tire Service Co., Columbus, \$10,000. Edward C. Karshner, Fred S. Pickering, E. O. Sterns, C. N. Bryson, Barton Griffith, Jr.

M. F. Hooven & Son Co., Dayton, \$50,000. E. J. Hooven, G. W. Llewellyn, E. Benham, J. B. Kring, C. C. Hooven.

Mount Bethel Oil and Gas Co., Denison, \$40,000. James Sober, J. K. Miller, J. A. Guthrie, John L. Sober, George H. Phillips.

Greif-Lehr Shoe Co., Elyria, \$25,000. Louis M. Greif, J. A. Lehr, Geo. H. Hill, Harold H. Perry, Dorothy P. Hill.

Frank A. Dunning Co., Akron, \$15,000. O. G. Schaelein, C. E. Way, A. H. Stall, W. H. Irwin, Lester W. DuVall.

Eagle Tire Co., Cleveland, \$10,000. Fannie Werner, William Werner, Paul W. Stanley, James S. DeZort, William J. Lenahan.

Eureka Tool & Die Co., Dayton, \$12,000. Lon O. Shank, George J. Capliski, Camille E. Monnier, Nellie L. Shank, Kathryn M. Monnier.

Long Hollow Coal Co., Columbus, \$25,000. O. E. Harrison, R. R. Stalter, J. A. Stalter, H. C. Allread, T. J. Frasure.

Electric Smelting & Aluminum Co., Cleveland, \$10,000. Charles P. Hine, J. Frank Pease, Carl V. Wevgandt, Stanley L. Orr, Elmon L. Andrews.

Bevo Oil & Gas Co., Fostoria, \$10,000. F. M. Bevard, H. W. Pankhurst, T. H. Wells, M. E. List, Harry Ulman.

West Shore Realty Co., Cleveland, \$25,000. L. J. Ursem, S. Gaylitch, E. J. Hemington, Mathias Besch.

Increases

Ninth Garage Co., Cleveland, \$700,000 to \$2,300,000.

Ohio Cut Stone Co., Cleveland, \$25,000 to \$400,000.

Sunlight Electrical Manufacturing Co., Warren, \$50,000 to \$100,000.

Ohio Trailer Co., Cleveland, \$300,000 to \$1,000,000.

Buckley Cigar Box Co., Deshler, \$10,000 to \$40,000.

Midland Oil Co., Newark, \$60,000 to \$150,000.

Fred M. Geissen & Son Co., Cleveland, \$10,000 to \$20,000.

Arlington Co., Cleveland, \$500,000 to \$600,000.

McLain Grocery Co., Massillon, \$12,500 to \$100,000.

The Louis Abrams Co., Cleveland, \$10,000 to \$100,000.

Farmers' State Bank of McClure, Ohio, McClure, \$25,000 to \$35,000.

Ohio State Rubber Tire Co., Port Clinton, \$250,000 to \$1,000,000.

City Allotment Co., Cleveland, \$110,000 to \$150,000.

Klein & Heffelman Co., Canton, \$261,800 to \$1,000,000.

Horning Realty Co., Cleveland, \$10,000 to \$25,000.

Women's City Club of Cleveland, \$2500 to \$5000.

Commercial Poster Co., Cleveland, \$25,000 to \$50,000.

W. H. Buescher & Sons Co., Cleveland, \$40,000 to \$150,000.

Akron Cultivator Co., Akron, \$100,000 to \$10,000.

Federal Waterproofing Co., Akron, \$100,000 to \$10,000.

Seventy-First Euclid Co., Cleveland, \$10,000 to \$400,000.

Steele-Alderfer Co., Cuyahoga Falls, \$150,000 to \$350,000.

Fowler Peanut Butter Co., Dayton, \$10,000 to \$25,000.

Erie-Huron Realty Co., Cleveland, \$25,000 to \$200,000.

Lodina Oil & Gas Co., Cleveland, \$15,000 to \$200,000.

Morrow Feed and Supply Co., Morrow, \$25,000 to \$50,000.

Decrease

Toledo Transfer Co., Toledo, \$140,000 to \$50,000.

Klein & Heffelman Co., Canton, \$350,000 to \$261,000.

Stockoff Bros. Co., Gallipolis, \$50,000 to \$1,000.

PUBLIC UTILITIES COMMISSION

No. 1775—In the Matter of the Application of The Lake Shore Electric Railway Company For Consent and Authority to Extend the Time of Payment of Not to Exceed \$1,200,000.00 Par Amount, of First Mortgage, Five Per Cent. Gold Bonds of The Toledo, Fremont and Norwalk Railroad Company, Dated January 1, 1900.—Prayer Granted.

(Dated October 9, 1919.)

This day this matter came on to be heard and was heard upon the application of The Lake Shore Electric Railway Company, (a corporation under the laws of Ohio created by an agreement of consolidation dated August 29th, 1901, by and among certain corporations theretofore existing, including The Toledo, Fremont and Norwalk Railroad Company), which agreed to pay certain outstanding issues of bonds of said companies, among which was an issue of first mortgage, five per cent. twenty-year gold bonds of said The Toledo, Fremont and Norwalk Railroad Company, of which \$1,200,000.00, principal amount, is now outstanding, and which bonds, dated January 1, 1900, will mature January 1, 1920, asking such consent and authority of this commission as will authorize it to consummate an agreement, negotiated with the parties in interest, whereby the maturity date of said first mortgage bonds of The Toledo, Fremont and Norwalk Railroad Company will be extended to January first, 1925, in consideration, among other things, of the payment by applicant, during such extended period of interest at the rate of six and one-half per centum per annum.

The commission, being fully advised in the premises, and having taken into consideration the conditions now obtaining in the financial markets and surrounding the sale of securities, finds that it will be much more advantageous to the applicant to reorganize its said indebtedness by negotiating such extension of said bonds and paying such increased interest, than to sacrifice new securities at the discounts which would now have to be offered to market any new securities to obtain the funds necessary

for the payment and discharge of said first mortgage bonds of said The Toledo, Fremont and Norwalk Company upon January first, 1920, should the maturity date thereof not be extended, and it appearing that some manner of discharging or postponing the date of the payment and discharge of said obligations must be provided on or before the first day of January, 1920, the commission further finds that, in view of the satisfaction of the trustees for, and the holders of said bonds, therewith, the said extension of the maturity date of said bonds is reasonably necessary and required, and is satisfied that its consent and authority therefor should be granted. It is, therefore,

Ordered, That said The Lake Shore Electric Railway Company be, and hereby it is authorized to extend to the first day of January, 1925, the maturity date of the one million, two hundred thousand dollars (\$1,200,000.00), principal amount of first mortgage, five per cent. gold bonds of The Toledo, Fremont and Norwalk Railroad Company, the payment of which it has heretofore assumed, and to pay thereupon during said period, interest at the rate of six and one-half per centum per annum, all in accordance with the terms set forth in the agreement providing for said extension, a copy of which, marked "Exhibit B," is appended to the application herein, and to execute such instruments of writing, and do all and several the things necessary to be done to secure said extension of the maturity date of said bonds, and to perform its part of said agreement relative to such extension of the maturity date of said bonds and the payment, as consideration therefor, of said increased interest thereupon. It is further

Ordered, That the applicant make verified report to this commission of the consummation of such extension of the maturity date of said bonds.

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No. 1719—In the Matter of the Application of The Peoples Light and Power Company of East Liberty, Ohio.—Prayer Granted.

(Dated September 27, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary) this matter came on for final consideration upon the application of The Peoples Light and Power Company (a corporation duly organized and existing under the laws of Ohio, for the purpose of erecting a plant for the distribution of electrical energy for public and private consumption in and about the vil-

lage of East Liberty, Ohio), asking the consent and authority of this commission to issue common capital stock of the total par value of twenty thousand dollars, the proceeds arising from the sale thereof to be used to pay for the construction of applicant's plant, estimated to cost the sum of \$16,139.76, and to provide a working capital of \$3860.24.

Upon consideration whereof, and being fully advised in the premises, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon that the applicant proposes to erect a system for the distribution of electrical energy, the cost of which has been estimated at the sum of \$16,139.76 and that to carry on its business it will require a working capital of \$3860.24, and that the issue of applicant's said capital stock and the money to be procured thereby are reasonably required and necessary for the aforesaid construction, completion, extension and improvement of its facilities, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The People's Light & Power Company (of East Liberty, Ohio) be, and hereby it is authorized to issue its common capital stock of the total par value of twenty thousand dollars (\$20,000.00) and that said capital stock be sold for the highest price obtainable, but for not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to-wit:

(a) The payment of the cost of the provision and construction of applicant's plant, the estimated cost of which is the sum of \$16,139.78, as more fully set forth in the exhibit filed herein September twenty-sixth, 1919, which exhibit hereby is made a part of this order by reference; and

(b) The provision of a working capital in the sum of \$3,860.24.

It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1670—In the Matter of the Application of The Alliance Gas & Power Company for Authority to Have Issued, Certified and Delivered to or Upon Its Order \$16,000.00, Face Value of Bonds. Prayer Granted.

(Dated September 26, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the application, as amended, of The Alliance Gas & Power Company, (a corporation duly organized and existing under any by virtue of the laws of Ohio), asking the consent and authority of the commission to issue \$16,000.00, principal sum, of first and refunding mortgage, five percent gold bonds, the proceeds to be used for the reimbursement, in part, of applicant's treasury for uncanceled expenditures therefrom, within the period September 30, 1916, to January 1, 1919.

Upon consideration whereof, and being fully advised in the premises, the commission finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

(1) That as of January 1, 1919, the applicant had actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$135,029.74, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

(2) That the issue of applicant's said bonds is reasonably required and the money to be procured thereby necessary for the reimbursement of applicant's treasury, in part, for the aforesaid uncanceled capital expenditures.

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Alliance Gas & Power Company be, and hereby it is authorized to issue its first and refunding mortgage, five percent bonds of the principal sum of sixteen thousand dollars (\$16,000.00), and that said bonds be sold for the highest price obtainable, but for not less than ninety percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be devoted to and used for the following purpose, and no other, to-

wit: The reimbursement, in part, of applicant's treasury for the sum of \$135,029.74, not procured from the issue of stocks, bonds, notes or other evidences of indebtedness, actually expended therefrom to January 1st, 1919, for the construction, completion, extension and improvement of its facilities, as more fully set forth in the petition herein, which hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1761—In the Matter of the Application of The Portsmouth Telephone Company for Consent and Authority to Issue and Dispose of \$100,000.00 Common Capital Stock.—Prayer Granted.

(Dated September 23, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the application of The Portsmouth Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and sell common capital stock of the par value of one hundred thousand dollars, the proceeds arising from the sale thereof to be used to discharge applicant's first mortgage bonds, of such principal sum, which mature August first, 1920:

Upon consideration whereof and being fully advised in the premises, the commission finds:

(1) That the applicant now has outstanding bonds of the principal sum of \$100,000.00 which mature August first, 1920, when said indebtedness must be paid and discharged or refunded and reorganized, and

(2) That the issue of applicant's said capital stock is reasonably required and the money to be procured thereby necessary for the payment and discharge of said indebtedness,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Portsmouth Telephone Company be, and hereby it is authorized to issue its common capital stock of the total par value of one hundred thousand dollars (\$100,000.00) and that said capital stock be sold for the highest price obtainable

but for not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The payment and discharge of applicant's outstanding first mortgage bonds of the principal sum of \$100,000.00. It is further

Ordered, That forthwith upon the acquisition of any of said bonds, the applicant render the same non-negotiable and, upon the acquisition of the whole of said issue, cancel and destroy the same. It is further

Ordered, That applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar semi-annual period of the issue and disposition of said capital stock, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order and, when and as the same shall be done, the cancellation and destruction of said bonds.

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No. 1740—In the Matter of the Joint Application of The Chesapeake and Potomac Telephone Company of West Virginia, and H. J. Mattes, Jacob Wahl, J. C. Hessman and Others, Trading as the Miltonsburg Telephone Company.—Prayer Granted.

(Dated September 23, 1919.)

This day, (the commission having deemed a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of The Chesapeake and Potomac Telephone Company of West Virginia, (a corporation duly organized under the laws of West Virginia and duly authorized to and engaged in business in the state of Ohio), and H. J. Mattes, Jacob Wahl, J. C. Hossman, and others, trading as The Miltonburg Telephone Company, asked the consent to and approval, by this commission, of the sale by the former and purchase by the latter of that part of the property of the former situated in the townships of Malaga and Center, and in the village of Miltonsburg, Monroe county, Ohio, and to the making, by said parties of a certain agreement providing, among other things, for the retention of the physi-

cal connection now existing between their respective plants and the continued interchange of toll service thereby.

Upon consideration whereof and being fully advised in the premises, the commission finds, from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purposes of this proceeding, that the convenience of the public will be promoted thereby and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the purchase and sale of such property and the retention of said physical connection for the continued interchange of toll service should be granted. It is, therefore,

Ordered, That said The Chesapeake and Potomac Telephone Company of West Virginia be, and hereby it is authorized to sell and convey to the said B. J. Mattes, Jacob Wahl, J. C. Hossman and others, trading as the Miltonsburg Telephone Company, the property and plant situated in Malaga and Center townships, and the village of Miltonsburg, Monroe county, Ohio, (which said property is more fully described in Schedule A appended to the application, which hereby is made a part of this order by reference); and the said B. J. Mattes, Jacob Wahl, J. C. Hossman and others, trading as the Miltonsburg Telephone Company, as aforesaid, hereby are authorized to purchase and acquire said property and to pay therefor the agreed consideration of one hundred dollars. It is further

Ordered, That said applicants be, and hereby they are authorized to retain the physical connection between their respective plants and to continue to interchange toll service, as provided by law. It is further

Ordered, That forthwith upon the exercise of the authority herein granted, the applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of the property herein authorized to be sold and purchased. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within said territory, nor shall the findings herein as to rates and service be binding upon this commission in any future proceeding involving said matters.

No. 1714—In the Matter of the Joint Application of the Wise Electric Company, Owned Individually by J. A. Wise, and The Garrett Electric Light and Power Company, a Corporation, For Authority For the Sale and Transfer of Certain Electric Light and Power Plants and Property.—Prayer Granted.

(Dated September 24, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of one J. A. Wise, the owner and operator, under the trade name of the Wise Electric Company, of the electric light and power plant located at Mowrystown and Sardinia, Ohio, and The Garrett Electric Light and Power Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this commission, of the sale, by the said J. A. Wise and the purchase by The Garrett Electric Light and Power Company of all the property, rights, privileges, rights-of-way and easements, as a going concern, of the said Wise Electric Company:

Upon consideration whereof, and being fully advised in the premises, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purpose of this proceeding, that the convenience of the public will be promoted by said purchase and sale of property and that the public thereby will be furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that its consent and authority for such purchase and sale of public utility property should be granted. It is, therefore,

Ordered, That the said J. A. Wise be, and hereby he is authorized to sell and convey to The Garrett Electric Light and Power Company, all right and title to the property and assets, as a going concern, of the Wise Electric Company, as the same are more fully described and enumerated in a detailed inventory filed herein, which inventory hereby is made a part of this order by reference; and said The Garrett Electric Light and Power Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of eleven thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicants file with this commission schedules providing for their respective withdrawal from and inauguration

of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

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No. 1754—In the Matter of the Joint Application of J. H. Smith, and A. H. Rosselet, Partners, Owning the Winchester Electric Light and Power Company, and The Garrett Electric Light and Power Company, a Corporation, For Authority For the Sale and Transfer of Certain Electric Light and Power Plants and Property.—Prayer Granted.

(Dated September 24, 1919.)

This day, (the commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of J. H. Smith and A. H. Rosselet, partners, owning and operating, under the trade name of the Winchester Electric Light and Power Company, the electrical distributing system at Winchester, Ohio, and The Garrett Electric Light and Power Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this commission, of the sale by the said J. H. Smith and A. H. Rosselet and the purchase by The Garrett Electric Light and Power Company of all the property, rights, privileges, rights-of-way and easements, as a going concern, of the said Winchester Electric Light and Power Company:

Upon consideration whereof, and being fully advised in the premises, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purposes of this proceeding, that the convenience of the public will be promoted by said purchase and sale of property and that the public thereby will be furnished adequate service for a reasonable and just rate, or charge therefor, and is satisfied that its consent and authority for such purchase and sale of property should be granted. It is, therefore,

Ordered, That the said J. H. Smith and A. H. Rosselet, part-

ners, be, and hereby they are authorized to sell and convey to The Garrett Electric Light and Power Company, all right and title to the property and assets, as a going concern, of the Winchester Electric Light and Power Company, as the same are more fully described and enumerated in a detailed inventory filed herein, which inventory hereby is made a part of this order by reference; and said The Garrett Electric Light and Power Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of two thousand, five hundred dollars. It is further

Ordered, That forthwith upon the exercise of the authority herein granted, the applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

ATTORNEY GENERAL

Where It is Necessary For the State Highway Commission to Take Over Work Under Section 1209 G. C. Those Contracts Growing Out of the Granting of State Aid as Specified in Sections 1193 to 1223, G. C. the Following Rule May Be Laid Down:—If the Action of the State Highway Commission in Granting the Application of the County Commissioners of Township Trustees State Aid and Ordering the Making of Plans, Etc., Was Taken at Any Time On and After June 28, 1917, Up to and Including Aug. 26, 1919, Then Section 1209 G. C. as in Effect Between Those Dates is the Governing Authority in the Matter of Removing a Contractor and Completing His Work. While if Such Action of the Commissioner Were Taken Before June 28, 1917, Then Section 1209, G. C. as in Force Prior to That Date, is the Governing Authority, Even Though the Contract Itself May Have Been Entered Into Subsequent to June 28th, 1917.—As to Contract Entered Into in Accordance With Section 1224 G. C. at Any Time On and After June 28, 1917, Up to and Including August 26, 1919, Section 1209 G. C. as in Effect Between Those Dates is the Governing Authority.

No. 648—(Opinion Dated September 24, 1919.)

Hon. A. R. Taylor, State Highway Commissioner, Columbus, Ohio.

Dear Sir: A recent communication, signed by your predecessor, Hon. Clinton Cowen, reads as follows:

“We have a number of contracts which were let between the dates of June 28, 1917, and August 26, 1919, on which we anticipate that it will be necessary for us to take over the work under Section 1209 of the General Code of Ohio.

I respectfully ask for your opinion as to whether the procedure to be followed in completing this work after forfeiture of contract will be in accordance with the provisions of Section 1209 in force between the above mentioned dates, or whether the procedure must be in accordance with Section 1209 as amended in House Bill No. 162 passed by the legislature on May 9, 1919, and filed in the office of the secretary of state May 28, 1919.”

Said Section 1209 as in force from June 28, 1917, to and including August 26, 1919, reads as follows:

“If, in the opinion of the state highway commissioner, the contractor has not commenced his work within a reasonable time, or does not carry the same forward with reasonable progress, or is improperly performing his work, or has aban-

done, or fails or refuses to complete a contract entered into under the provisions of this chapter, the state highway commissioner shall have full power and authority to enter upon and complete said improvement either by contract, force account or in such manner as he may deem for the best interest of the public, paying the full costs and expense thereof from the balance of the contract price unpaid to said contractor, and in case there is not sufficient balance to pay for said work, the state highway commissioner shall require the contractor or the surety on his bond to pay the cost of completing said work. It shall be the duty of the attorney general or the prosecuting attorney of the county in which said improvement or some part thereof is situated, upon request of the state highway commissioner, to collect the same from the contractor, and the surety on his bond. When the state highway commissioner elects to complete said improvement by contract, such contract may be let either with or without competitive bidding, as the state highway commissioner may deem for the best interest of the public. When the state highway commissioner elects to invite competitive bids, he shall proceed in the manner provided by Section 1206 of the General Code. Contracts for the completion of improvements may be let either for a lump sum or on a unit price basis. Before entering into a contract for the completion of an improvement, the commissioner shall require a bond with sufficient sureties, conditioned as provided in Section 1208 of the General Code. When the contract is for a lump sum, the bond shall be in an amount equal to the contract price, and when the contract is let on a unit price basis the state highway commissioner shall fix the amount of the bond. When the state highway commissioner elects to complete an improvement by force account, and in so completing said improvement enters into an agreement with an individual, firm or corporation, to furnish material or machinery, employ labor or purchase material on behalf of the state, or supervise the work of construction, or do any or all of said things, the state highway commissioner may, if he deems it necessary, require said individual, firm or corporation to enter into bond with sufficient sureties in an amount fixed by the state highway commissioner, conditioned for the faithful performance of said agreement."

By provisions of House Bill No. 162, in effect as of August 27, 1919, said section in the form quoted was repealed, and in its stead there became effective a new section bearing the same number and providing in substance that in case of removal of a contractor from his work by the state highway commissioner, such commissioner shall first offer to the contractor's surety the option of completing the work, and thereupon, if the surety does not avail himself of

such option, shall advertise the uncompleted work for letting upon competitive bids at an estimate not to exceed the balance remaining from the original contract price after deducting the amount paid the original contractor. If no bid is received at or under such estimate, the commissioner is to re-estimate and re-advertise the uncompleted work upon competitive bids, and award the work for not more than such re-estimate, to the lowest and best bidder, who must give bond. If the estimated cost of completing a defaulted contract does not exceed five thousand dollars, the commissioner may complete the same by force account, or by a contract let without advertisement.

At the outset, it may be observed that the activities of the State Highway Department fall into three general classes:

(1) Improvements growing out of the granting of state aid on the application of county commissioners or township trustees, the procedure for which improvements is specified in great part by Sections 1193 to 1223 G. C.

(2) Maintenance and repair by state highway commissioner as specified particularly in Section 1224 G. C.

(3) Improvement by state highway commissioner as mentioned in Section 1191 G. C. where both county commissioners and township trustees fail within the statutory period to avail themselves of their privilege of applying for state aid.

Proceeding to answer your inquiry so far as it bears upon contracts for improvements of the class first noted:

The series of Sections 1193 to 1223 provides for the filing of an application for state aid by county commissioners or township trustees; action on such application by state highway commissioner; preparation of plans, etc., by state highway commissioner in case he grants the application; approval of such plans by county commissioners or township trustees; determination on the part of the commissioners or trustees to make the improvement (Section 1200); advertisement by state highway commissioner for bids for the doing of the work; award of contract and taking of bond; removal of contractor as provided in Section 1209 in case he fails to make proper progress; apportionment of cost to state, county, township and property owners; assessment against abutting or adjoining lands; and levying of tax and sale of bonds to provide funds for the work.

This brief outline is sufficient to show that the series of statutes named prescribes a definite and connected line of procedure

from the beginning to the end of the improvement undertaking; and that the action provided for by Section 1209 is a link in the chain of procedure. Hence, if the state highway commissioner finds that a contractor is not proceeding properly, such commissioner is at liberty to take such action only as is provided by the statute in force when the improvement proceeding became a pending proceeding; for it is provided by Section 26 of the General Code as follows:

"Whenever a statute is repealed or amended, such repeal of amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

In the case of *State ex rel. Scobie v. Cass*, 13 O. C. C. (N. S.) 449; 22 O. C. D. 208 (affirmed without report 84 O. S. 443), the Circuit Court of Cuyahoga County held:

"The addition, when it was incorporated into the General Code, of the words 'and shall be governed by the provisions of this chapter relating to the erection of public buildings in the county, to the act of March 8, 1906, providing for the appointment of a commission for the building of court houses, is not effectual to limit or restrict the powers of the commission as granted by the original act, where the work of such a commission in building a court house had been carried almost to completion before these words were incorporated into the original act; but in such a case the work should be completed under the provisions of the act as it originally stood."

The court say in the course of the opinion at page 456:

"If this conclusion must necessarily follow from the addition of the words to the statute above referred to, and now appearing in Section 2338 for the first time, then, of course, there is nothing for this court to do but to allow the prayer of the petition. We, however, do not think the conclusion contended for by the plaintiff, from the change in the statute, necessarily follows. The commission came into existence for the purpose of building the court house. Preliminary to the appointment of four members of the commission by the court of common pleas the commissioners of the county had, under the act, determined to build a court house; had submitted to the electors of the county the question of issuing bonds for

that purpose, which had been determined affirmatively by them, and then it was that the building commission was organized, pursuant to the terms of the statute, and the members appointed thereto by the court were to serve until the court house, as contemplated in the act, was completed. The commission thus created, had but one thing to do, to-wit, to build and complete the court house. The money was provided by the issuing of bonds for that purpose. The members of the commission appointed by the court took an oath and gave bond for the faithful and honest discharge of their duty. In case one of them died before the court house was completed, the judge appointed his successor, and the commission was authorized to employ architects, superintendents and employes, and to adopt plans and specifications and estimates, and invite bids and award contracts for the court house, and for furnishing heat, light and ventilating the same, and for sewerage thereof, and were given authority to determine all questions connected with that work until the court house shall have been completed and accepted by the building commission.

Thus the statute had one purpose, one object. The commission's service was continuous, beginning with its appointment and ending when the court house was completed. It seems clear, thus viewed, that the work of the commission in carrying out the objects and purposes for which it was appointed, and the building of the court house down to its completion, constituted within the meaning of Section 26 of the General Code 'a proceeding' and that any amendment of the statute made after that proceeding was instituted and carried forward almost to completion, can in no manner affect the powers given that commission in the original act. Suppose, indeed, that the codifying act by some error had repealed the entire act creating the commission and authorizing the erection of the court house, can it be said that if that had been done the commission would have been absolutely without power or authority to proceed at all with the completion of the building, and that it must remain in its unfinished and unusable state? It would seem as though the very purpose and object of Section 26 was to provide against just exactly such contingency, such repeals, and to permit the authority originally granted to be exercised down to the completion of the work which this statute itself originally authorized, and which was begun and largely completed before this amendment was made."

Attention is also called to an opinion of this department relating to a previous amendment of said Section 1209 (Opinions of Attorney General for 1917, Vol. II, p. 1231), wherein it was held:

"The provisions of Section 1209 G. C., in reference to completing contracts under force account, do not apply to those contracts entered into prior to June 28, 1917, in so far as the new matter therein set out, is concerned."

At p. 1234 of the opinion it was said, after quoting the then new form of Section 1209:

"The provisions above quoted vary materially from the provisions of the old law. However, it is readily seen that none of these provisions have anything to do with the contract as it was originally entered into, but they have to do with matters which arise after the entering into of the contract, and at first thought it might seem that these provisions might be made applicable to a contract entered into prior to June 28, 1917, as well as those entered into after said date. It must be remembered that the sureties of the contractor also have the right to rely upon the provisions of the law as they were at the time the contract of suretyship was entered into. The matter above quoted has to do very materially with the rights of the surety under his contract, for the reason that he is compelled to pay the difference between the original contract price and the price at which the state highway commissioner is enabled to complete the work under force account.

Hence, it is my opinion that these provisions should not be followed in the matter of completing contracts under force account, in reference to those contracts which were entered into prior to June 28, 1917."

The foregoing observations give rise to the question: When does the improvement proceeding become a pending proceeding? Answer to that question may be found in the opinion of this department last above referred to, the fourth syllabus of which reads:

"The different steps connected with an improvement of a highway constitute a proceeding and under Section 26 G. C. the provisions of the law as it existed prior to June 28, 1917, must be followed when the first step in reference to a particular road improvement, was taken prior to said date. The first step in the matter of a road improvement is the approval by the state highway commissioner of the application of the county commissioners, or the approval of any part of the highways for which application is made, and his ordering the county surveyor to make plans, etc., of the part of the highway so approved."

In the course of said opinion the following language is used at p. 1236:

"Hence, if this approval of the state highway commis-

sioner was made and his ordering the county surveyor to make plans, specifications, etc., for an improvement occurred before June 28, 1917, then your department would proceed under the provisions of the old law. But if these steps have been taken since the 28th day of June, 1917 the provisions of the new law would control in the matter of your further proceedings."

Therefore, as to contracts of the first class above mentioned, namely, those growing out of the granting of state aid as specified in Sections 1193 to 1223 G. C., the following rule may be laid down in answer to your inquiry:

If the action of the state highway commissioner in granting the application of the county commissioners or township trustees for state aid and ordering the making of plans, etc., was taken at any time on and after June 28, 1917, up to and including August 26, 1919, then Section 1209, as in effect between those dates, is the governing authority in the matter of removing a contractor and completing his work; while if such action of the commissioner were taken before June 28, 1917, then Section 1209, as in force prior to that date, is the governing authority, even though the contract itself may have been entered into subsequent to June 28, 1917.

Referring next to contracts for maintenance and repair as specified in Section 1224: This last named section contains the following provision (107 O. L. 133):

"* * * The state highway commissioner may enter into a contract with any individual, firm or corporation which gives sufficient bond for the faithful performance of said contract, or with the county commissioners of any county or township trustees of any township in which such highway is situated for the repair and maintenance of such highway, or any part thereof, according to the plans and specifications provided by the state highway commissioner, or for the furnishing of the material or labor for such repair and maintenance, or the state highway commissioner may furnish the material or labor or both, and supervise the repair and maintenance. * * *"

Said Section 1224 appears in the same chapter of the General Code as does Section 1209; hence, we are brought back to the opening lines of said Section 1209,

"If in the opinion of the state highway commissioner the contractor has not commenced his work within a reasonable time, or does not carry the same forward with reasonable progress, or is improperly performing his work, or has abandoned, or fails or refuses to complete a contract entered into

under the provisions of this chapter, the state highway commissioner shall have full power and authority," etc.

This would indicate that Section 1209 is applicable to contracts entered into under favor of Section 1224.

However, it is doubtful whether a contract entered into by virtue of the last named section is a proceeding, or part of a proceeding, as contemplated by Section 26 G. C. It is true that if in maintenance work there is used a material different from that originally employed, an assessment against adjoining lands must be made, but that provision is merely incidental to the evident purpose of the section, namely, to cast upon the state highway commissioner the positive duty of maintaining certain roads by such means and using such material as he may think proper, rather than to lay down a course of procedure to be resorted to for the purpose of bringing about the work of maintenance and repair.

At all events, whether Section 26 is applicable or not, the first step prescribed by Section 1224, when maintenance work is let out by contract, is the making of the contract; and bearing that fact in mind our inquiry is whether such a contract, if entered into between June 28, 1917, and August 26, 1919, is governed, in the matter of removal of contractor and completion of his work, by the form of Section 1209 as it existed between those dates, or by its later form in effect August 27, 1919.

Section 28 of Article II of the Ohio Constitution reads in part:

"The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts."

In addition, it is well settled in Ohio that a valid statute is as much a part of a contract as if the statute were set out therein in full.

Robbins v. Hennessey, 86 O. S. 181;
Compton v. Railway, 45 O. S. 592;
Weil v. State, 46 O. S. 450.

In this last named case, the Supreme Court quotes with approval the following from Cooley on Constitutional Limitations:

"Contracts must be expounded according to the law in force at the time they were made; and the parties are as much bound by a provision contained in the law as if that provision had been inserted in and formed part of the contract."

It certainly may not be said as a matter of law that the

repeal of former Section 1209 and the substitution of its later form as of August 27, 1919, would not invade the rights of the contractor and his surety, if the later form were to be held applicable. In other words, the contractor and his surety might well say that they entered into the contract upon the basis that in case of failure of the contractor to complete it, the state highway commissioner should have the full liberty given him in Section 1209 before its recent amendment of completing the contract in such manner as he might deem for the best interest of the public. As was said by Davis, J., in discussing the matter of competitive bids in the course of the opinion in *Mackenzie v. State*, 76 O. S. 369, at page 374:

"Every man has realized in his own experience that the lowest price does not always secure satisfactory results, and that some things which are most desired are not open to competition."

Therefore, the contractor and his surety have the right to insist on the terms of the contract as entered into, including the provisions of Section 1209 as it existed when the contract was entered into; and they are not to be bound by new stipulations put into said section subsequent to the entering into of said contract, even though such stipulations may relate only to procedure on the part of the state highway commissioner, and even though there might be some ground for the claim that such new stipulations were favorable rather than otherwise, to the contractor and his surety.

You are therefore advised as to contracts entered into in accordance with Section 1224 G. C. at any time on and after June 28, 1917, up to and including August 26, 1919, that Section 1209 as in effect between those dates is the governing authority in the matter of removing the contractor and completing his work.

As to contracts of the third class above mentioned,—improvement by state highway commissioner where local authorities do not avail themselves of their right to apply for state aid: It has been learned, upon conference at your department, that contracts of this character are infrequent and that it is not likely that you will be called upon to take action toward removing contractors therefrom; for which reason no opinion is herein expressed as to the construction of Section 1209 in connection with such contracts. It is suggested that should occasion arise, you submit the facts for opinion.

Under Section 4726-1 General Code, all Rural Boards of Education in a Township Must Each Call an Election in Their Respective Districts for Centralization of the Schools of Such Township, in Order that Such Question may be Legally Voted on in the Manner Provided in Section 4839, General Code.—Section 4726-1 General Code, Must be Read in Conjunction with Section 4726, General Code, and A County Board of Education has Authority to Order An Election on Centralization of Schools in a Township Which has One or More Rural School Districts as its School Territory.—Centralization of Schools Must be Voted Upon by the Electors of A Township and Not A Part of it, Village and City School Districts Being Excluded.—County Boards of Education Have Full Authority to Create a New School District From One or More Districts or Parts Thereof.

• No. 547—(Opinion Dated August 5, 1919.)

Hon. George F. Crawford, Presecuting Attorney, Greenville, Ohio.

Dear Sir: Acknowledgment is made of your request for an opinion upon the following statement of facts:

"It is proposed by the township rural school districts of one of the townships in our county, to call an election for the purpose of voting on the question of centralizing the schools of the township. In this township there are three special school districts. In one of these special districts there are not sufficient petitioners (25%) to compel the board of education to call an election. The county board of education has not asked nor ordered the board of education and the board of education in said special district has failed to call an election on the question of centralization.

"Should the said township rural school district proceed with the election and centralization should carry, and the special district in question should take no part in said election and none of the residents vote on the question of centralization at such election, what effect, if any, would that have on the special school districts stated. In other words, will the special school district in any way be bound by the vote of the balance of the township on the question of centralization, and will they be compelled to come into the centralized district?"

Section 4726-1, G. C., provides:

"In townships in which there are one or more school districts, the qualified electors of such school districts may vote on the question of centralizing the schools of said township districts, or of special school districts therein, without interfering with the existing school district organization until the result of the election shall have been determined. If at such

election in any township a majority of all the votes cast shall be in favor of centralizing the schools in said township, the probate judge of the county shall create a new board of education for the said township, without delay, by selecting from the several boards of education thus consolidated, five suitable persons, giving each former district its fair representation in such selection, which such five persons so selected shall constitute the board of education for said township until the first township election thereafter; at such first township election thereafter the electors of such township shall elect two members of the board of education for two years, and three members to serve for three years, and at the proper elections thereafter their successors shall be elected for four years. In a majority of the electors in said township vote against said centralization at the time above designated, then the several school districts in said township shall proceed as though no election had been held."

Attention is invited to Opinion No. 1102, issued by the Attorney General March 25, 1918, found on page 476 of the Opinions of the Attorney General for that year, bearing upon section 4726-1 G. C., wherein the syllabus reads:

"1. In a township in which there are seven rural school districts the qualified electors of all of such districts may vote on the question of centralizing the schools of such township district.

"2. It is not permissible under the provisions of section 4726-1 G. C. for a part of the school districts of a township to vote on the centralizing of the schools of such districts and prevent the electors of other districts, located in whole or in part within the township, from participating in said election.

"3. A part of the districts of a township may be united as one district and then provide for centralization under the provisions of section 4726 G. C.

"4. The fact that certain territory is located in another civil township, but is attached to the territory of a township where all the districts desire to vote on the question of centralizing the schools of such township, will not prevent the electors residing therein from participating in the election upon the question of centralizing the schools of such township under section 4725-1 G. C."

The question which was answered in this opinion was in the case of where, in a certain township, there were seven special school districts, only four of which were wholly within the township, the rest having adjacent attached territory beyond the township lines, and it was desired to know whether the four districts could cen-

tralize their schools without action on the part of the other three special districts or any part of them. Commenting upon such section, in answering the question, which in a very large degree is similar to the one which you have submitted, the Attorney General said:

"The section is not clear when considered with a view to answering your several questions but I am convinced from a careful consideration of same that all the school districts of a township must participate, where action is desired, under the terms of said section. While it was formerly the policy of the school law of Ohio, and provision was made therefor, that each civil township in itself should consist of a township school district, that provision of law no longer exists and the policy seems now to be that township lines shall not be seriously considered in forming or arranging school districts. In fact, when the new school code was enacted in 1914, section 4736 thereof provided that:

'In changing boundary lines the board may proceed without regard to township lines, and shall provide that adjoining rural districts are as nearly equal as possible in property valuation.'

"This provision no longer remains in said section but the policy thereof seems to be constantly followed in practice. Said section 4726-1 says, 'in townships in which there are one or more school districts'. It does not say where there are one or more entire school districts, but simply that there is more than one school district; that then the qualified electors of such school districts, meaning of course all the school districts of the township, may vote on the question of the centralizing of the schools of said township districts. If the language would say 'may vote upon the question of the centralizing of the school districts lying only within the township lines of the civil township', or would specifically provide that all territory outside of such township lines should be excluded and residents thereof not permitted to participate in such election, a different conclusion might be reached, but, as noted above, considering the language in its present form, I can come to but one conclusion and that is that all school districts with territory within the township must unite when the provisions of section 4726-1 are followed. You will understand, however, that each school district may centralize its schools separately, as is provided by section 4726 G. C., and in case such proceeding is impracticable, districts may be combined into one district and then centralize their schools."

In the case which you submit you indicate that practically the entire township rural population is favorable to the proposition of holding an election for the purpose of voting on the question of cen-

tralizing the schools of the township and that in such township there are three special school districts, in one of which there is not sufficient petitioners to call an election in that particular district, under the provisions of sections 4726-1, and it is entirely possible that in such special district the question of centralization may not be voted upon.

Attention is invited to the fact that under the existing Ohio law and since the adoption of the new school code in 1914, there are no longer any special districts, but such former special districts are now rural school districts and the tendency has been toward centralization of the schools of a township and the elimination of many of these small former special districts, in order that the township, as a whole, by uniting its efforts along educational lines, may be in a position to bring to all its pupils the best possible educational advantages which grow out of unity of purpose and a common endeavor. It would hardly seem reasonable or good school administration, that a small rural school district, formerly a special school district, could hold out and nullify the desires of the other district or districts in the township and thus prevent a majority of the electors of such township from securing the centralization of schools which a majority of such township might desire.

A careful analysis of the language of section 4726-1 G. C. shows the intent of the legislature to be that centralization of schools should take place in a township for the reason that the section speaks of "such election in any township," the "schools in said township," and that after an election in such township there shall be created "the board of education for said township" by the probate judge in his selection from the several boards of education thus consolidated five suitable persons; further, this section speaks of the "electors of the township," in that they shall elect in the following years the members of the board of education. The section further says:

"If a majority of the electors in said township vote against said centralization * * * then the several school districts in said township shall proceed as though no election had been held."

Nowhere in the above section is there any provision that any lesser section of territory than a township shall vote upon the question of centralization of schools, and it is section 4726-1 which provides for the centralization of schools in townships in which there are one or more school districts.

But section 4726-1 G. C., taken alone is not effective, for the reason that it does not provide for calling an election, but merely says,

“the qualified electors of such school districts may vote on the question of centralizing the schools of said township districts, or special districts therein.”

Supplemental section 4726-1 G. C. must be read in the light of, and in connection with, section 4726 G. C., which it supplements in order to care for a township in which there is more than one district. Section 4726 G. C. reads in part:

“ * * * upon the order of the county board of education, must submit such question to the vote of the qualified electors * * * at a general or special election * * * .”

It would follow that if a county board has authority to order an election in a township to centralize its schools, where such township is one district, then an election could also be ordered by that authority in a township which happened to have more than one district, for in centralization proceedings the township is the unit, and the purpose in both section 4726 G. C. and supplemental section 4726-1 G. C. is to get the view of a majority of the electors in a township.

So unless section 4726-1 G. C. is read with main section 4726 G. C. there is no provision for calling an election unless every one of the school boards in the township join in the action and call the election under section 4839 G. C. which reads:

“The clerk of each board of education shall publish a notice of all school elections in a newspaper of general circulation in the district or post written or printed notices thereof in five public places in the district at least ten days before the holding of such election. Such notices shall specify the time and place of the election, the number of members of the board of education to be elected, and the term for which they are to be elected, or the nature of the question to be voted upon.”

The county board of education has full authority to arrange districts as it sees fit; it can combine two or more districts into a new district, in which an election on centralization could be had under section 4726 G. C. if such territory was a township; or it can combine any districts into a lesser number of districts, but regard must always be had to the remonstrance provided for in section 4736 G. C. and in section 4692 G. C. where transfers of territory only are made and no new district is created. If the

county board creates a new district or districts, it must also appoint a new board of education for such new district or districts, and such new district could be composed of one or more existing school districts or parts thereof under section 4736 G. C. and a remonstrance against such new district to nullify the action of the county board must be signed by a majority of the male electors in the whole of such new district, that is the territory affected, and such remonstrance must be filed within thirty days after the filing of the notice of change of territory sent by the county board to each local board affected by such new district. If, after a county board of education has created new districts in a township, there still remains more than one school district in such township, then section 4726-1 G. C. applies for centralization purposes, but it must be read with the main section 4726 G. C. in order to be effectively administered in the matter of bringing the issue to a vote in the township concerned and where several districts in the township are involved. But if one of the "special districts" you indicate, had later become a village district and not a rural district, such village district cannot be concerned in a centralization election under either section 4726 G. C. or 4726-1 G. C., for the sections cover rural districts only.

It is therefore the opinion of the Attorney General that:

(1) Under section 4726-1 G. C. all rural boards of education in a township must each call an election in their respective districts for centralization of the schools of such township, in order that such question may be legally voted on in the manner provided in section 4839 G. C.

(2) Section 4726-1 G. C. must be read in conjunction with section 4726 G. C. and a county board of education has authority to order an election on centralization of schools in a township which has one or more rural school districts as its school territory.

(3) Centralization of schools must be voted upon by the electors of a township and not a part of it, village and city school districts being excluded.

(4) County boards of education have full authority to create a new school district from one or more districts or parts thereof.

In the Case of a Voluntary Action on the Part of the County Commissioners, Providing for an Agricultural Agent Under Section 9921-2 General Code, the Statute Contemplates an Obligation to Appropriate not Less than \$1000.00 Annually for a Term of not Less than Two Years. The Provision of Section 9921-2 General Code, in Reference to the Ohio State University, Directing the Amount to be Paid for a Period of Five Years, Relates only to Cases Where the Agricultural Extension Work has Been Inaugurated in Pursuance of a Referendum Vote.

No. 636—(Opinion Dated September 22, 1919.)

Hon. Robert B. McMullen, Prosecuting Attorney, Hillsboro, Ohio.

Dear Sir: Acknowledgment is made of your communication requesting my construction of certain provisions of the statutes authorizing employment of a county agricultural agent, as follows:

"In 1918 the board of county commissioners made an appropriation in the sum of \$1500 for a county agent under section 9921-1 et seq. General Code.

This year (1919) the board of county commissioners have made an appropriation of only \$1000 for the county agent.

1. Is the board of commissioners compelled to make the 1919 appropriation in the same sum (\$1500) as the 1918 appropriation?

2. If so, is the board of commissioners or their successors in office required to make an appropriation in a like sum (\$1500) for a period longer than two years?

I may say here that I have advised the board that the 1918 appropriation is binding on them for at least two years and possibly five, but they have asked me to get an opinion from you."

Section 9921-2 General Code, governs in the matter involved in your inquiry, and provides:

"From moneys appropriated by the state for the employment of agricultural agents, not to exceed three thousand dollars in any one year shall be expended for any county that shall raise at least one thousand dollars for the support of an agricultural agent for one year, and shall give satisfactory assurance to the trustees of the Ohio state university that a like sum shall be raised for a second year, or shall establish and maintain a county experiment farm as provided in the statutes. To secure this aid from the state, the board of county commissioners of any county shall agree to the employment of an agricultural agent approved by the dean of the college of agriculture of the Ohio State University."

In a previous opinion directed to Hon. R. A. Kerr, Prosecuting Attorney, Troy, Ohio, dated June 21, 1919, and being Opinion No. 502 of this department, it was observed that the provisions of the statutes governing the employment of county agricultural agents were in some respects inconsistent with other sections of the statutes governing appropriation and expenditures of money by the county commissioners, and these statutes being special in their application and of later enactment, to the extent of the inconsistency, supersede the more general provisions of other statutes.

The very obvious import of the provisions of section 9921-2, *supra*, is that the co-operative action of the county and state in the matter of employment of the county agent shall not be inaugurated or undertaken for a shorter period than at least two years, and in my opinion it is the clear intent of the statute that the commissioners by entering into the arrangement with the state for contribution to the fund for the agricultural work specified, obligate themselves to provide at least \$1000 annually for a period of at least two years, which after the affirmative action of the commissioners becomes an obligation imposed by the law and may not be disregarded.

You inquire as to the obligation to appropriate the same amount in the year 1919 as was appropriated in the year 1918, to-wit \$1500. It is noted that the statute provides that the county must raise at least \$1000 for one year "and shall give satisfactory assurance to the trustees of the Ohio State University that a like sum shall be raised for a second year," etc.

I am of the opinion that the term "like sum" which fixes the extent of performance to which the commissioners become obligated, has reference to the preceding expression "at least \$1000", and that an appropriation of \$1000 is a compliance with the purport and mandate of the statute.

You also make a query as to the five year term of co-operation in the employment of the county agent in reference to the case presented. This provision is found in section 9921-5 which authorizes a referendum by the electors of the county for the purpose of directing and requiring the commissioners to co-operate with the state in the employment of the county agent, in case the commissioners fail to act voluntarily in the matter, and in this connection it is provided:

"After having established this county agent work in any country, the county commissioners of such county shall continue to make such annual appropriations for said work as the

trustees of the Ohio State University may direct, not exceeding fifteen hundred dollars annually, for a period of five years."

This provision is so obviously more drastic and so essentially different from that provided in the statute above considered in connection with the voluntary action of the commissioners that I have no trouble in reaching the conclusion that it relates only to cases where the agricultural extension work has been inaugurated in pursuance of a referendum vote, in which case the provision for a five year period as well as the provision delegating to the trustees of Ohio State University the authority to determine the amount "not exceeding fifteen hundred dollars annually" which shall be appropriated by the county commissioners are a substitute for the provisions of section 9921-2 General Code which govern in case of voluntary action by the commissioners.

You are therefore advised that in the case of a voluntary action on the part of the county commissioners, the statute contemplates an obligation to appropriate not less than \$1000 annually for a term of not less than two years.

MOTION DOCKET

10197—Kaufman Koppel v. Ferdinand Bader, Sheriff. Motion for an order directing the court of appeals of Hamilton county to certify its record. Sustained.

10198—Edward T. Slider v. Winifrede Coal Co. Motion for an order directing the court of appeals of Hamilton county to certify its record. Overruled.

10199—Hannah D. Underwood et al. v. Enos K. Rutan et al. Motion for an order directing the court of appeals of Logan county to certify its record. Sustained.

10200—Hannah D. Underwood et al. v. Enos K. Rutan et al. Motion by defendants to dismiss motion to certify record in cause No. 16340 on the general docket. Overruled.

10202—S. A. Shade, Guardian, v. L. order directing the court of appeals off Crawford county to certify its record. Overruled.

10210—Abner L. Whitaker v. William H. Luebbering, Admr. Motion for an order directing the court of appeals of Hamilton county to certify its record. Sustained.

10211—George H. Phelps on behalf of the City of Findlay, Ohio, v. The Logan Natural Gas & Fuel Co. et al. Motion for an order directing the court of appeals of Hancock county to certify its record. Sustained.

10217—Ida M. Smith v. The Pennsylvania Co. Motion for an order directing the court of appeals of Columbiana county to certify its record. Overruled.

10218—Ida M. Smith v. The Pennsylvania Co. Motion by defendant to dismiss petition in error in cause No. 16330 on the general docket. Sustained.

10219—Minnie Shaner et al. v. Hugh B. Sullivan et al. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Overruled.

10220—John W. Taylor v. James W. Roberts. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Overruled.

10221—State of Ohio ex rel. Joseph McGhee, Atty. Gen., on behalf of Ben D. Smith, v. Daniel M. Smith. Motion for an order directing the court of appeals of Columbiana county to certify its record. Overruled.

10268—Sadie Arnoff et al. v. Clifford S. Chase et al. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Sustained.

10270—Jessie Cullen v. J. Bassichis. Motion for an order directing

the court of appeals of Cuyahoga county to certify its record. Overruled.

10271—The Peet & Schuster Co. v. The Trinity Evangelical Lutheran Church Congregation of Versailles, Ohio. Motion for an order directing the court of appeals of Darke county to certify its record. Overruled.

10272—The Springfield National Bank v. William Paige. Motion for an order directing the court of appeals of Clark county to certify its record. Overruled.

10273—Otto Pfleger v. The City of Cincinnati. Motion for an order directing the court of appeals of Hamilton county to certify its record. Overruled.

10274—The City of Cincinnati v. The State of Ohio ex rel. Motion for an order directing the court of appeals of Hamilton county to certify its record. Overruled.

10275—The State of Ohio ex rel. Emery Lattanner, Supt. of Banks, v. Frederick P. Hills. Motion for an order directing the court of appeals of Delaware county to certify its record. Overruled.

10276—The State of Ohio ex rel. Emery Lattanner, Supt. of Banks, v. Anna Ferris et al. Motion for an order directing the court of appeals of Delaware county to certify its record. Overruled.

10277—Joe Kimet et al. v. County Board of Education of Van Wert County, Ohio. Motion for an order directing the court of appeals of Van Wert county to certify its record. Overruled.

10280—The D. T. Owen Co. v. Peter Kalasinski. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Overruled.

10282—The Cleveland Ry. Co. vs. Eva M. Hill. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Overruled.

10283—Peter Putnam v. The Board of County Commissioners of Paulding county. Motion for an order directing the court of appeals of Paulding county to certify its record. Sustained.

GENERAL DOCKET

16181—The State ex rel. Joseph McGhee, Atty. General, v. Charles G. Cooper, County Treasurer of Hamilton County. In Mandamus. Dismissed on motion of John G. Price, Atty. Gen., at costs of plaintiff, without record and without prejudice.

16264—The Auglaize Box Board Co. v. Bessie Hinton, Auglaize. Judgment affirmed.

SECRETARY OF STATE

NEW CORPORATIONS.

Camp Roosevelt Co., Perry, \$20,000.
W. L. Lorimer, M. C. Hickman, C. T. Mehaffey, L. A. Stanhope, W. G. Stephenson.

E. W. Johnson Plumbing Co., Cleveland, \$10,000. E. J. Albl, L. B. Spanner, E. Schwartz, S. E. Boim, J. C. Reasner.

Glouster Oil and Gas Co., Glouster, \$25,000. F. P. Kientz, G. H. Harper, E. F. Carpenter, George W. Rose, Lewis F. Jones, Jr.

Ohio-Gulf Petroleum Co., Columbus, \$10,000. Lewis F. Laylin, Charles H. Rea, M. W. Legg, C. D. Beck, Joseph R. Rapp.

Akropolis Publishing Co., Akron, \$5,000. Nick Chamberlain, Andrew Declas, Harry G. Ream, Leo Bambour, St. Bakirtgl.

Akron Sausage Co., Akron, \$2,000. Frank Abraham, Milan Kapitz, August Steidle, Frank R. Schoner, J. Fred Smith.

City Dairy Co., Toledo, \$50,000. Thomas A. Ammer, Edgar M. Flowers, Joseph E. Tanber, Mike A. Francis, Albert H. Jamra.

Luckey Lime and Supply Co., Luckey, \$500,000. C. C. Martin, W. L. Kinsting, L. B. Martin, H. A. Kilmer, Carl W. Sperling.

Lyder Rubber Trading Co., Akron, \$10,000. F. H. Lyder, Harry G. Ream, Wanda Johns, Haydn B. Swinehart, L. Hughes.

Majestic Exposition Co., Cleveland, \$5,000. Mark A. Copeland, Clayton Quintrell, George A. Mowery, M. E. Getchell, O. E. Schultz.

Figure Mold Garment Co., Elyria, \$5,000. Harry C. Well, Lee Stroup, C. M. Braman, A. L. Garford, C. E. Blanchard.

P. D. Q. Taxi Co., Fostoria, \$10,000. George B. Caldwell, Jay D. Leisenring, Charles L. Bevard, M. E. List, E. M. Bevard.

Seiber-Berry Agency Co., Akron, \$75,000. Thomas J. Seibert, Peter J. Berry, H. R. Smith, Dana E. Williams, D. D. Seibert.

J. Howard Bothwell, George N. Sandquist, William Claire, W. P. Barnum, G. F. Hammond.

McCoy Motor Car Co., Toledo, \$75,000. Paul R. McCoy, Henry A. Beckers, Maurice Allen, Erwin R. Effler, LeRoy E. Eastman.

Securities Investment Co., Akron, \$205,5000. Wm. H. Evans, Jr., Fred J. Steinert, W. C. Hall, Frank B. Burch, E. E. Workman.

Creswell Realty Co., Cleveland, \$10,000. Clan Crawford, W. L. Fleming, R. C. Green, E. R. Shields, N. M. Odenkirk.

East Palestine Country Club Co., East Palestine, \$30,000. C. F. Adamson, P. C. Hartford, J. F. Stoddard, F. R. Smith, J. C. Chamberlin.

National Pattern Co., Toledo, \$10,000. G. Leo Foley, James R. Cable, Pearl A. Cable, Catherine Foley, John W. Raab.

Toledo Abattoir Co., Toledo, \$150,000. Benjamin A. Berry, Sadie S. Crissey, Merle S. Berry, L. A. Johns, Wesley S. Thurstin, Jr.

Magnetic Springs Hotel and Bath Co., Magnetic Springs, \$300,000. Ed. Grandstaff, Grant Shaw, H. L. Gilbert, Charles E. Ross, C. A. Morrison.

Twentieth Century Investment Co., Cleveland, \$10,000. John A. Elden, H. S. Brown, James J. Shipley, G. L. Russell, Madeline V. Lynch, Donald Dickinson.

Warren Products Co., Warren, \$10,000. M. J. Konold, George F. Konold, E. T. Ward, Paul B. Masters, O. R. Grimmesey.

Cuyahoga Wall Paper Co., Cleveland, \$10,000. Morris Strauss, Walter Ketteringham, William Ketteringham, M. M. Guzik, Frank Randazzo.

Leach-Weisenberger Co., Columbus, \$25,000. William E. Leach, Leo D. Weisenberger, Alice J. Weisenberger, Andrew Weisenberger, Maude M. Leach.

La Behr Drug Co., Cleveland, \$10,000. A. S. Lavine, Jack Behrens, Julius Bloomberg, M. G. Gloss, Eugene E. Wolf.

Annevar Building Co., Ravenna, \$10,000. Ludwig Straka, Harry Jaggers, W. A. Carpenter, Vinton Wood, Charles F. Day.

Motor Inn Co., Manchester, \$10,000. O. D. Martin, R. L. Grimes, A. B. Scott, Percy Doddridge, J. H. Carroll.

Berea Homes Co., Berea, \$50,000. Percy Neubrand, Hervey E. Miller, H. G. Wilkinson, H. E. Dunham, David Gilchrist.

Cleveland Food Products Co., Cleveland, \$50,000. N. E. Polster, Sam Friedman, David Klein, S. E. Boim, Joe Engel.

L. Brun Co., Cleveland, \$10,000. Louis Brun, Fritz Frebe, H. Frank Grigoleit, Margaret Grigoleit, Elsie Brun.

Nottingham Steel Co., Cleveland, \$10,000. A. Halle, J. O. Stein, D. B. Stone, M. S. Fishel, B. R. Kohn.

Ohio Rubber Mould & Machine Co., Akron, \$10,000. R. A. Vanke, P. H. Kingston, W. C. Hall, Free H. Lahmer, Lee J. Myers.

Rubinstein Drug Co., Cleveland, \$10,000. L. J. Kohn, J. H. Kohn, L. M. Young, H. A. Stewart, Charles E. Phipps.

F. R. Fortune Tool and Manufacturing Co., Wooster, \$200,000. R. K. Evans, F. R. Fortune, E. Faumier, William Harris, Clarence L. Allis.

H. & S. Paint and Oil Co., Cleveland, \$20,000. C. M. White, N. J. Brewer, A. B. Curtiss, C. R. Bell, Jr., L. N. McShane.

Only Spark Plug Co., Columbus, \$50,000. Aaron Margolinsky, David Margolinsky, L. E. Andrews, J. B. Harris, Mrs. Effie Cohen.

Randall Land Co., Cleveland, \$10,000. W. H. Abramsky, James A. Farrell, R. W. Edwards, Corinne Allshouse, A. K. Strong.

Sanitarium Realty Co., Worthington, \$75,000. G. T. Harding, Jr., Orson C. Warner, Clara B. Umlandt, Franke F. Cobban, Mary E. Tripp.

Wade Chateau Co., Cleveland, \$120,000. C. A. Alexander, John H. Schultz, Quay H. Findley, Trafton M. Dye, I. M. McDonough.

Agricultural Appraisal Co., Cincinnati, \$500,000. Charles A. Stanton, F. J. Ruh, George W. Plat, Walter A. Ryan, Ray F. Nieman.

Nash-Cincinnati Retail Co., Cincinnati, \$25,000. Frank J. Santry, Robert W. Faulkner, Clara B. Bradford, Lloyd J. Blundea, Ray W. Haas.

Akron Colosseum Building Co., Akron, \$300,000. L. Robert Houston, O. Nicholas Gabriel, W. D. Lynch, Charles C. Benner, V. H. Blount.

Soline Oil Co., Cleveland, \$10,000. William Rothenberg, J. M. Andrus, Charles I. Russo, Harry W. McLeod, W. H. McMorris.

Monroe Equity Exchange Co., El-dorado, \$40,000. E. B. Creager, Elmer L. Kimmel, W. L. Trump, Ezra C. House, H. O. Siler.

Bloomer Equity Exchange Co., Bloomer, \$20,000. John G. Rautson, P. M. Rhoades, C. D. Rhoades, Wm. E. Apple, Uriah S. Apple.

Shem-McKay Coal Co., Sebring, \$50,000. William E. Shem, Walter McKay, George J. Windle, F. D. Shewell, H. R. Ewing.

Sidney Washing Machine Co., Sidney, \$25,000. William A. Perry, W. H. Persinger, J. D. Barnes, William P. Metz, J. L. Perry.

Japan Co., Cleveland, \$10,000. Arthur E. Johnson, George C. Martindale, David L. Johnson, M. C. Byrnes, B. E. Robertson.

Summit-Strand Theatre Co., Toledo, \$118,250. George W. Ritter, Leland C. Gardner, Lee N. Schminck, R. M. Holman, M. M. McGowan.

Station 15 Cooperative Co., Station 15, \$10,000. E. K. Price, Chas. Long, Frank V. Law, James McCauley, Jos. McLandsborough.

Coach Builders' Hardware Co., Cleveland, \$10,000. James P. Wood, W. T. Kinder, W. B. Cockley, King Tolles, H. O. Jones.

Simona Music Co., Cleveland, \$2,000. A. W. Simon, M. G. Hindley, R. L. White, Edna A. White, Charlotte C. Simon.

Akron Motor Exhibition Co., Akron, \$10,000. John A. Brittian, H. A. Townsley, E. T. Jones, Andrew Auble, Earl H. Gibbons.

Defiance Amusement Co., Defiance, \$30,000. Wm. A. Thomas, Harry C. Henry, H. W. Wortman, D. F. Openlander, F. F. Hall.

Perfection Auto Body and Radiator Repair Co., Cleveland, \$10,000. Jacob Leb, Cleveland J. Suffens, Samuel Rembrandt, J. Shapiro, Jeannette Kippen.

Jackson Abattoir Co., Jackson, \$25,000. James P. Sprouse, Charles P. Chapman, Peter W. Christ, C. A. Patton, Homer Garrett.

Freeman Grocery Co., Ironton, \$15,000. W. H. Crawford, D. Freeman, Thomas Russell, Clara C. Russell, Rose Crawford.

M. M. Spangler Realty and Investment Co., Cleveland, \$10,000. M. M. Spangler, Clara Spangler, Deborah S. Bailey, Ralph G. Bailey, Sydney A. Davies.

Cincinnati Wall Paper Co., Cincinnati, \$25,000. Harry W. Webster, F. J. Lock, Aaron H. Webster, Vance McCreery, Carl Uhl.

Red Bank Gravel Co., Cincinnati, \$20,000. Theodore Cornuelle, Fred W. Cornuelle, George W. Doran, James Davidson, Ray Hicks.

Ohio Cutlery Co., Massillon, \$75,000. W. E. Hemperly, M. E. Storie, W. E. Brentzel, John V. Hammersmith, L. C. Wiggins.

American Savings and Loan Co., Cleveland, \$100,000. George A. Townsend, David F. Berland, Christ Doose, Joseph P. Sullivan, John Q. House.

Premier Dental Co., Cleveland, \$5,000. Arthur T. Wehrle, Harry C. McKinley, Thomas A. Young, Joseph G. Stralton, Dean B. Meck.

Springfield-Advance Machine Co., Springfield, \$50,000. H. S. Bradley, A. Richard Kent, Grover F. Elgen, J. W. Garver, M. J. Twomey.

Electric Sales & Engineering Co., Cleveland, \$1,000. George Q. Kelley, M. Bernhardt, C. A. Byrne, M. A. McCormack, A. M. Kelley.

Red Wing Corporation Co., Dayton, \$300,000. P. E. Bennett, F. L. Allen, L. A. Sutemeister, John Thomas, Walter W. Boulger.

Wallace-Snyder Realty Co., Springfield, \$10,000. George Wallace, Ella Wallace, Roscoe O. Snyder, Florence B. Snyder, William J. Swope.

Eastern Ohio Mortgage Co., Cleveland, \$100,000. E. E. McCloud, Sam B. Fitzsimmons, W. M. Fisher, E. C. Berghaus, M. A. Jordan.

Fern-O-Grand Manufacturing Co., Cincinnati, \$15,000. John Fern, Lyman E. Collins, Elmer Poe, Bertha M. Allen, Katherine Smith.

Klise-Paumier Oil Co., Wooster, \$100,000. T. L. Eyssen, B. F. McCann, H. J. Eckstein, J. L. Stephenson, Geo. Quinby.

Public Accounting and Auditing Co., Columbus, \$5,000. W. A. Lawrence, Paul B. Beck, G. B. Fearn, D. L. Armstrong, A. G. Price.

Auto Electrical Maintenance Co., Cleveland, \$10,000. Charles Z. Sedgley, Frank G. Byers, C. A. Ferrill, Harry E. Page, R. L. Aldridge.

Toledo Cylinder Regrinding and Machine Co., Toledo, \$25,000. George W. Ritter, Leo H. Schminck, Larry Bevan, R. M. Holman, M. M. McGowan.

Young-Mattox Co., Dayton, \$15,000. E. P. Mattox, Hugh Young, H. C. Mattox, E. L. Corbly, J. P. Becker.

American Swiss Magneto Co., Toledo, \$100,000. J. A. Bohannon, C. C. Smith, J. B. Nordholdt, H. L. Thompson, Wm. W. Knight.

Lansing Corporation Co., Lansing, \$3,000. Joseph Brighteen, John Pizzin, Charles D'Ustani, Tizino Tocket, Emilio D. Amico.

Armington Engineering Co., Euclid, \$25,000. N. J. Brewer, C. M. White, L. N. McShane, A. B. Curtiss, S. S. Armington.

W. C. Richardson Co., Cleveland, \$30,000. John T. Keely, Henry K. Bourne, Clarence E. Richardson, Tracy H. Paine, James McSweeney.

Forest Hills Realty Co., Hamilton, \$50,000. C. E. Hooven, C. Hooven Griffiths, Blanche H. Griffiths, Don Hooven, Mrs. J. C. Hooven.

Rosslynn Realty Co., Toledo, \$10,000. William G. Jones, William C. Braatz, Michael J. Tobin, Herman M. Van Noorden, Arch E. Keen.

Increases

Forster Realty Co., Cleveland, \$350,000 to \$500,000.

Emporium Co., Columbus, \$30,000 to \$75,000.

Ohio Heating & Pipe Bending Co., Cleveland, \$100,000 to \$250,000.

Community Coffee & Spice Co., Alliance, \$10,000 to \$50,000.

Fairlawn Supply and Coal Co., Fairlawn, \$50,000 to \$150,000.

Federal Card Index and Printing Co., Lakewood, \$5,000 to \$10,000.

Marietta Silo Co., Marietta, \$40,000 to \$150,000.

Kinsman Electric Co., Kinsman, \$12,000 to \$17,000.

Columbus Metal Products Co., Columbus, \$10,000 to \$30,000.

Columbus Auto Parts Co., Columbus, \$100,000 to \$300,000.

Building Products Co., Toledo, \$5,000 to \$100,000.

White Tool & Supply Co., Cleveland, \$100,000 to \$200,000.

Canton Engineering & Electric Co., Canton, \$150,000 to \$500,000.

Colby-Merrill Co., Toledo, \$5,000 to \$10,000.

D. L. Auld Co., Columbus, \$200,000 to \$400,000.

Union Club Co. of Cleveland, Ohio, Cleveland, \$750,000 to \$900,000.

Herberich Realty Co., Akron, \$500,000 to \$1,000,000.

Decrease

Consolidated Auto Top Co., Cleveland, \$100,000 to \$1,000.

PUBLIC UTILITIES COMMISSION

1730—In the Matter of the Application of The Ohio Service Company, for Authority to Issue Its Preferred Capital Stock in the Amount of Two Hundred and Thirty-seven Thousand, Five Hundred Dollars (\$237,500.00). Prayer Granted.

(Dated October 20, 1919.)

This day, this matter came on for final consideration upon the application of The Service Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue its six per cent preferred capital stock of the total par value of two hundred and thirty-seven thousand, five hundred dollars, the proceeds arising from the sale thereof to be used to reimburse its treasury for moneys, not secured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, between the dates May first, 1917, and December thirty-first, 1918, for the construction of additions, extensions and improvements to its facilities or to discharge indebtedness incurred for and on said account:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that, within the period May first, 1917, to and including December thirty-first, 1918, the applicant actually expended from its treasury, for the construction, completion, extension and improvement of its facilities, the sum of \$143,389.53, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness; that upon December thirty-first, 1918, the applicant was indebted to certain of its customers, for and on account of the advancement, by said customers, of the funds with which to provide service connections, etc. to their installations, in the sum of \$34,797.63, and that the issue of applicant's

said preferred capital stock is reasonably required, and the money to be procured thereby necessary, for the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures and, when and as the same may be discharged, the funding of the aforesaid indebtedness to its customers, and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Ohio Service Company be, and hereby it is authorized to issue its six per cent preferred capital stock of the par value of one hundred and ninety-one thousand, one hundred dollars (\$191,100.00), and to sell the same for the highest price obtainable, but not less than seventy-five percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said capital stock be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the reimbursement of applicant's treasury for the sum of \$143,389.53, not procured by the issue of stocks, bonds, notes or other evidences of indebtedness, actually expended therefrom for the construction, completion, extension and improvement of its facilities within the period May first, 1917, to and including December thirty-first, 1918, and for no other purpose whatsoever.

And it appearing that said sum of \$34,797.62, which applicant is indebted to certain of its customers, represents the balance, as of December thirty-first, 1918, of the advances, by applicants for service during the war period, of the cost of constructing their service connections, under an agreement with the applicant of repayment of such advances by a rebate of twenty percentum of the monthly bills of the consumers so making said advancement, until such time as such advances should be fully repaid, together with interest thereon; and it appearing, further, that the applicant is so repaying said sum in accordance with said agreement, and that said payments, so made from time to time, are, in effect, a payment from income for which the applicant will be entitled to reimburse its treasury from the future sale of further issues of capital stock, it is, therefore, further

Ordered, That, from time to time, as such repayments are made and the amount so repaid shall equal the sum of \$750.00, or more, said The Ohio Service Company hereby is further auth-

orized to issue additional six per cent preferred capital stock, to be sold for not less than the minimum price hereinbefore prescribed, to secure moneys with which to reimburse its treasury for such payments, provided that the authority, in this paragraph of this order granted, shall not consent to or authorize the issue of such preferred capital stock in excess of the par value of forty-six thousand, four hundred dollars (\$46,400.00), and may be exercised, at any one time, only to the extent necessary to reimburse applicant's treasury for the actual sums so repaid. It is further

Ordered, That any discount arising from the sale of said capital stock shall also be extinguished pursuant to the terms and conditions of the Commission's aforesaid rules and regulations. It is further

Ordered, That the applicant make verified report to this commission semiannually, within fifteen days after the close of each calendar semiannual period, of the issue and disposition of said capital stock, and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

*

No. 1143—In the Matter of the Application of The Citizens Telephone Company, of Circleville, Ohio, for Consent and Authority To Issue Six Per Cent Preferred Capital Stock. Modification of Order.

(Dated October 17, 1919.)

The commission having heretofore, to-wit: Upon December eleventh, 1917, by order duly made and entered herein, consented to and authorized the issue, by said The Citizens Telephone Company, of Circleville, Ohio, of six per cent preferred capital stock of the par value of thirty-four thousand, seven hundred dollars, and, upon June twenty-fifth, 1918, by supplemental order duly made and entered herein, consented to and authorized the issue, by said The Citizens Telephone Company, of Circleville, Ohio, of six per cent. preferred capital stock of the additional par value of forty thousand, eight hundred dollars, prescribing, in said orders, the purposes for which the proceeds arising from the sale of said capital stock should be expended:

Whereupon, came said The Citizens Telephone Company, of Circleville, Ohio, and, by its second supplemental application filed herein, represented that it has been impracticable to use the moneys received from the sale of said capital stock in the exact manner prescribed by said orders, but that said proceeds of said

capital stock have been expended for the following purposes, viz:

Reimbursement of its treasury for moneys, not secured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for capital purposes, within the five years next preceding the filing of the application herein	\$30,300.00
Partial payment of the consideration for the property purchased from Receivers of Central Union Telephone Company with the consent and authority of this Commission.....	23,550.00
Additions to exchange buildings at Circleville.....	2,351.43
Additions to central office equipment.....	6,088.55
Additions to station equipment.....	2,010.27
Additions to exchange pole lines.....	2,708.35
Additions to exchange aerial wire.....	4,653.82
Additions to underground cable.....	1,044.70
Additions to office furniture and fixtures.....	822.33
Additions to stable and garage equipment.....	2,137.28

And it appearing to the commission, from investigation and inquiry that the proceeds of the aforesaid capital stock have been actually expended for the aforesaid capital purposes, it is

Ordered, That the orders made and entered herein, as of dates December eleventh, 1917, and June twenty-fifth, 1918, be, and hereby they are modified and amended to provide and prescribe that the proceeds arising from the sale of applicant's preferred capital stock, the issue of which was therein consented to and authorized, shall be expended for the purposes hereinbefore set forth, instead and in lieu of the purposes prescribed by said orders.

J

No. 1765—In the Matter of the Petition of The Citizens Telephone Company of Circleville, Ohio, for Consent and Authority to Issue and Sell \$6,050.00 Preferred Capital Stock. Prayer Granted.

(Dated October 9, 1919.)

This day this matter came on for final consideration upon the application of The Citizens Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio with its principal office at Circleville, Ohio), asking the consent and authority of this commission to issue its six per cent. preferred capital stock of the par value of six thousand and fifty dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of its treasury for the sum of \$15,450.00 (not pro-

cured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom in partial payment of the consideration for certain property and assets purchased from the receivers of the Central Union Telephone Company under and by authority of the order of this Commission in proceeding No. 1125:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that, within the five years next preceding the date of the filing of the application herein, said applicant actually expended from its treasury for the acquisition of property, the sum of \$15,450.00, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said preferred capital stock is reasonably required and the money to be procured thereby necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures, and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Citizens Telephone Company (of Circleville, Ohio), be, and hereby it is authorized to issue its six per cent. preferred capital stock of the total par value of six thousand and fifty dollars (\$6,050.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The reimbursement, in part, of applicant's treasury for the sum of \$15,450.00 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom as a partial payment of the consideration for the property acquired of the receivers of the Central Union Telephone Company under authority of the order of this commission in proceeding No. 1125. It is further

Ordered, That applicant make verified report and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 288—In the Matter of the Joint Petition for the Approval of the Agreement for the Consolidation Under the Name of "The Ohio State Telephone Company," of The United States Telephone Company and fourteen other companies. Order Modified.

(Dated September 29, 1919.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for further consideration upon the application of The Ohio State Telephone Company for such modification and amendment of the order, made and entered herein as of date July twenty-third, 1914, in so far as it fixed and prescribed maximum rates for the furnishing of telephonic service by The Ohio State Telephone Company in the villages of Miamisburg, West Carrollton, Centerville and Sulphur Springs, Ohio, as will permit and authorize said The Ohio State Telephone Company to establish, in lieu of the rates so fixed by said order, the rates set forth in the schedule appended to said application and marked for identification, P. U. C. O. No. 1, Original Sheets Nos. 1, 2, 3, 4 and 5:

The commission, being fully advised in the premises, finds that taking into consideration the value of the property, used and useful in the furnishing of said service, the cost of furnishing the same, and the necessary amounts which should be set aside for depreciation and contingencies, the rates for furnishing telephonic service in said villages set forth in said schedule, identified as afore-said and appended to the instant application, save and except where the so-called Service Connection Charges and Charges for Moves and Changes are in violation of this Commission's Order No. 1728 of September thirteenth, 1919, are not unjust, unreasonable nor excessive, and will not yield a rate of return greater than said The Ohio State Telephone Company is entitled to earn upon its property so devoted to the service of the public in said villages. It is, therefore

Ordered, That the order, made and entered herein on the twenty-third day of July, 1914, be, and hereby it is modified and amended to permit and authorize The Ohio State Telephone Company to establish, maintain, impose and collect for the furnishing of telephonic service in the villages of Miamisburg, West Carrollton, Centerville and Sulphur Springs, Ohio, from and after the first day of October, 1918, the rates, tolls, charges and rentals set forth

in said schedule marked and identified as P. U. C. O. No. 1, Original Sheets 1, 2, 3, 4 and 5, save and except where the same, as to the so-called Service Connection Charges and Charges for Moves and Changes, are in violation of this Commission's Order No. 1728 of September thirteenth, 1919, instead and in lieu of the rates, tolls, charges and rentals so fixed and prescribed by said order of July twenty-third, 1914.

✽

No. 1769—In the Matter of the Petition of The Lima Natural Gas Company and C. R. Jenkins, for Authority to Sell and Purchase the Natural Gas Plant, and All Rights and Franchises at Coldwater, Ohio. Prayer Granted.

(Dated October 8, 1919.)

This day, (the Commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of The Lima Natural Gas Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio) and one C. R. Jenkins, (a citizen and resident of the village of Coldwater, Mercer County, Ohio), asking the consent to and approval, by this Commission, of the sale, by said The Lima Natural Gas Company and the purchase by the said C. R. Jenkins, of the property, fixtures and rights of said The Lima Natural Gas Company in said village of Coldwater, Ohio:

Upon consideration whereof and being fully advised in the premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted thereby and that the public thereby will be furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that its consent and authority for such purchase and sale of public utility property should be granted. It is, therefore,

Ordered, That said The Lima Natural Gas Company be, and hereby it is authorized to sell and convey to C. R. Jenkins, of Coldwater, Ohio, its natural gas plant, property and rights, in and about the village of Coldwater, Mercer County, Ohio, as the same are more fully described in a detailed inventory appended to the application herein, which inventory hereby is made a part of this

order by reference; and the said C. R. Jenkins is authorized to purchase and acquire said property. It is further

Ordered, That said applicants, forthwith upon the exercise of the authority herein granted, file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the village of Coldwater, Ohio. It is further

Ordered, That nothing shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings as to rates and service hereinbefore set forth be binding upon this Commission in any future proceeding involving said matters.

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No. 1750—In the Matter of the Application of The West Richfield Telephone Company and The Cleveland Telephone Company For Permission to Enter Into, and Approval of a Contract for the Interchange of Toll Business. Prayer Granted.

(Dated September 29, 1919.)

This day, (the Commission deeming a hearing thereupon to be unnecessary), this matter came on for final consideration upon the joint application of The West Richfield Telephone Company and The Cleveland Telephone Company, (corporations duly organized and existing under and by virtue of the laws of Ohio), asking the approval, by this Commission, of their making and entering into a certain contract or articles of agreement providing, among other things, for the establishment of a physical connection between their respective systems and the interchange of toll service thereby:

Upon consideration whereof and being fully advised in the premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted thereby and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the establishment of such physical connection and the interchange of toll service by the applicants should be granted. It is, therefore,

Ordered, That The West Richfield Telephone Company and

said The Cleveland Telephone Company be, and hereby they are authorized to establish a physical connection between their respective systems and to interchange toll service thereby as provided by law. It is further

Ordered, That said applicants forthwith file with this Commission schedules of rates and charges, rules and regulations for such toll service. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

ATTORNEY GENERAL

The Fees Which Lawfully Accrue on Account of Proceedings Instituted for Violation of the Chapter Regulating Traffic Upon the Highways are Payable Out of the County Treasury in Pursuance of Section 3016 General Code, When Bail is Forfeited on Account of the Non-appearance of Defendant in a State Case, the Entire Sum Received Therefrom Must be Paid Into the County Treasury and the Fees in Such Case Cannot be Paid Therefrom, But Must be Recovered From the County Treasury in Pursuance of Section 3016 General Code. Where Services are Rendered by a Sheriff or Constable on a Prosecution Before a Mayor's Court For the Violation of the Traffic Regulations of the Chapter Relating to Motor Vehicles, Such Statutory Fees as Therein Accrue for Services Rendered Should Lawfully be Paid. However, Fees Due to the Sheriff or His Deputies go Into His Fee Fund. There is no Authority for Allowing a Fee of \$1.00 for Use of Motor Cycles in Making Such Arrests, Nor Can a Fee of 75c be Allowed to the Officer Either Arresting or Bringing the Violator Before the Court or Taking a Deposit From Such Violator and Returning Same to the Court.

No. 709—(Opinion Dated October 17, 1919.)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: You recently requested my opinion as follows:

"We respectfully request your written opinion upon the following matters:

Whereas sections 12626 and 12627 G. C., allow officer making arrest in motor vehicle speed violations to take the person arrested to an accessible judicial officer, in consideration of section 13500 G. C., together with opinion of the Attorney General, page 202, Annual Reports for 1909-1910, holding that when bail is forfeited no fees may be paid from such forfeitures, we respectfully request::

1. In case of forfeiture can any fees be legally paid anyone under section 12626 or 12627 or other motor vehicle speed laws of such chapter?
2. In case of conviction can fees be paid from the mayor's court to sheriff, deputy sheriff or constable?
3. In case such fees may be allowed can fees other than

fees provided by law be taxed; for illustration, a fee of one dollar for use of motor cycle?

4. Under such sections is a fee of 75c legally taxable and payable for the officer arresting and bringing the person arrested to such magistrate's court?

We are asking these questions in view of a special examination called for by the Toledo Automobile Club of the mayor's court of Maumee, Ohio, and neighboring justices of the peace."

Sections 12626 and 12627 to which you refer, are as follows:

"Sec. 12626. A person taken into custody, because of the violation of any provision of this subdivision of this chapter, shall forthwith be taken before a magistrate or justice of the peace in a city, village or county, and be entitled to an immediate hearing. If such hearing cannot be had, he shall be released from custody on giving his personal undertaking to appear in answer for such violation at such time or place as shall then be indicated, secured by a deposit of a sum equal to the maximum fine for the offense with which he is charged; or, in lieu thereof, if he be the owner by leaving the motor vehicle. If the person so taken is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present, with such judicial officer."

"Sec. 12627. If a judicial officer is not accessible, the accused under the next preceding section shall forthwith be released from custody by giving his name and address to the officer making the arrest and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made or instead, if he is the owner, by leaving the motor vehicle. If the accused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner who must be present."

Your first question relates to the authority for payment of fees to the court and the officer for services rendered, in case of forfeiture of the deposit provided for in the two sections quoted.

In case of violation of the traffic regulations embodied in the chapter, of which said sections are a part, in the due course of procedure a charge would be filed before the court or magistrate and a warrant issued or undertaking provided for, and perhaps other steps of the proceeding for which, elsewhere fees are provided; and thereafter the proceeding is interrupted by the forfeiture of the deposit by non-appearance of the accused, and upon this state of facts the question is, whether the fees which have accrued are payable.

The inquiry seems to be answered by the provisions of section 3016, which provides:

"In felonies, when the defendant is convicted the costs of the justice of the peace, police judge, or justice, mayor, marshall, chief of police, constable and witnesses, shall be paid from the county treasury and inserted in the judgment of conviction, so that such costs may be paid to the county from the state treasury. In all cases, when recognizances are taken, forfeited and collected and no conviction is had, such costs shall be paid from the county treasury."

It is understood that the provisions of sections 12626 and 12627 authorizing a deposit equal to the maximum fine provided for the offense constitute simply an expeditious means of realizing upon the undertaking; and in fact the deposit is to be regarded as governed by the provisions of law relative to disposition of forfeited undertakings. The statutes provide for payment into the county treasury of all moneys coming into the hands of magistrates in pursuance of proceedings under the criminal statutes of the state.

You are therefore advised that the fees which lawfully accrue on account of proceedings instituted for violation of the chapter regulating traffic upon the highways are payable out of the county treasury in pursuance of section 3016 G. C.

The opinion of the Attorney General at page 202 of the reports for 1909-1910, to which you call attention, holds:

"When bail is forfeited on account of the non-appearance of the defendant in a state case, the entire sum recovered thereby must be paid into the county treasury, and the fees of the mayor and chief of police may not be paid out of such sum so forfeited."

I agree with this holding, in that moneys so coming into the hands of the court shall be paid into the treasury and may not be applied directly to the payment of fees, which must be recovered from the county treasury in pursuance of section 3016, *supra*.

Section 4599 provides with reference to police courts that the clerk "shall immediately pay into the city and county treasury respectively, the amount then collected, or which may have come into his hands from all sources during the preceding months."

Section 4271 G. C. provides with reference to the mayor of a municipality as follows:

"All fines, penalties and forfeitures collected by him in state cases shall be by him paid over to the county treasury monthly."

Similar provision is made with reference to justices of the peace and other similar officers.

Your second question relates to payment of fees to sheriffs, deputy sheriffs and constables in cases pending before mayors' court. Section 13500 to which you call attention, provides:

"The warrant shall be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, to the marshal or other police officer thereof and, by a copy of the affidavit inserted therein or annexed and referred to, shall show or recite the substance of the accusation and command such officer forthwith to take the accused and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law."

However, the provisions of sections 12626 and 12627 taken in connection with other provisions of the statutes relative to the duties of sheriffs and constables seem to authorize a different view in relation to procedure under the traffic provisions of the chapter relating to motor vehicles.

By other provisions of the law, which need not be here set forth at length, sheriffs and constables are made conservators of the peace and authorized to arrest persons found violating the penal statutes of the state or committing breaches of the peace, and in pursuance of such general power, would be fully warranted in taking into custody persons found violating the provisions of the chapter relating to motor vehicles, and in pursuance of the provisions of said sections, would be authorized to convey such persons before an accessible magistrate or justice of the peace in a city, village or county, and having done so, I am of the opinion there is ample authority for the taxing in their favor of such fees as accrue for the services they render in such proceeding.

In other words, while under Section 13500 in the initial issuance of the warrant, the same is to be directed to a police officer of the municipal corporation, yet under the provisions of the chapter relating to motor vehicles, any police officer, including sheriffs and constables, is authorized generally to take his prisoner before a court either within or without a municipality, so that there would be no reason here to suppose that the statutory fees that may accrue shall not be payable to such officer as may have performed the service.

You are therefore advised that where services are rendered by

a sheriff or constable in a prosecution before a mayor's court for violation of the traffic regulations of the chapter relating to motor vehicles, such statutory fees as accrue for services rendered by him may lawfully be paid. Of course, the fees so accruing to the sheriff or his deputy constitute emoluments of the sheriff's office, which are received and collected for the sole use of the treasury of the county and must be accounted for and paid over to the treasury as provided by section 2977 G. C. et seq.

In answer to your third question, you are advised that no fees or costs are allowable unless specifically authorized by statute, and I know of no provision of law allowing fees such as that mentioned in your inquiry "a fee of \$1.00 for use of motorcycle."

Of course, there is provision for allowing to constables, for example, the necessary expense incurred "in transporting and sustaining prisoners, the same to be allowed by the magistrate and paid on his certificate—section 3347. But the fee so provided is not applicable to the service of executing a warrant or even the making of an arrest without warrant, and the mere bringing of the prisoner before the court where no special expense is incurred by way of transporting the prisoner, but only such as is incident to the execution of the warrant.

Your fourth question relates to the authority for payment of a fee of 75c to the officer arresting and bringing the person arrested to the magistrate's court, and you ask whether said payment is legal.

You are advised that the fees provided for the service of a warrant are all that may be taxed for the mere arrest and bringing of the accused before the court; the bringing of the accused into court under such circumstances being merely a part or incident of the execution of the warrant.

The question no doubt arises from a consideration of section 3010 G. C. which provides:

"When required by an examining court to take charge of the defendant or defendants, during the examination of such defendant or defendants upon any charge for the commission of a crime or offense against the laws of the state, sheriffs, marshalls and their deputies, constables, and watchman shall be allowed seventy-five cents for rendering such service, to be taxed and paid as other fees of such officers in like cases. When acting as the officer of such examining courts, such officer shall not receive fees for testifying upon such examination."

The fee here provided is for service in attendance upon the

examining court when in session for conducting the hearing in the cause, and is not applicable to the mere bringing of the prisoner into court in pursuance of the warrant for his arrest.

And from the purport of the facts which are stated as involved in your inquiry, and the sections cited relating to the traffic regulations, you are advised that the charge of 75c may not legally be allowed to the officer either arresting and bringing the violator of the traffic statutes before the court or taking a deposit from such violator and returning same to the court.

✽

Under Section 5348-2 General Code, a Safe Deposit Company or Bank Renting a Safe Deposit Box Cannot Allow the Personal Representative of a Deceased Renter of the Box to Take Securities Like Coupon Bonds From the Box Without Incurring the Liability Mentioned in Section 5348-2, General Code, Unless the Further Provisions of That Section are Complied With.

No. 688—(Opinion Dated October 11, 1919.)

Hon. J. Arter Weaver, Probate Judge, Bryan, Ohio.

Dear Sir: I acknowledge the receipt of your letter of October 3d requesting the opinion of this department, as follows:

"I ask your opinion as to what interpretation can be given the words 'Assets or property belonging to or standing in the name of a decedent,' which words are found in paragraph two of Section 5348-2 of the Inheritance Tax Law.

The reason for asking this, is that I can see where the decedent might leave no estate except coupon Liberty Bonds, etc., which would be transferred by simple delivery, and said securities would be in a safety deposit box in a bank or safe deposit company, which bank or safe deposit company did not have any jurisdiction over, except the safe keeping of same."

You evidently have in mind a specific question arising under the section named, and this opinion will be limited to answering that specific question, as it would hardly be within the bounds of propriety for this department to undertake a comprehensive "interpretation" of the phrase mentioned.

The specific question which you have in mind may be put as follows:

What is the duty of a bank or safe deposit company with respect to coupon bonds and other similar securities which may be in a safe deposit box rented by such bank or company to a decedent?

Section 5348-2 provides, in part, as follows:

"No safe deposit company, trust company, * * * bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent * * * shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, * * * without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the tax commission of Ohio may consent in writing to such delivery or transfer, and such consent shall relieve such safe deposit company, trust company * * , bank or other institution, person or persons, from the obligation to give such notice or to retain such portion. The tax commission or the county auditor, personally or by representatives, may examine such securities, deposits or other assets at the time of such delivery or otherwise. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, * * bank or other institution, person or persons, liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession to such securities, deposits, assets or property. Such liability may be enforced by action brought by the county treasurer in the name of the state in any court of competent jurisdiction."

Coupon bonds certainly come within the scope of the clause "securities, deposits, assets or property." The relation of the safe deposit company or bank renting a safe deposit box to the contents of that box certainly amounts to partial custody, if not more. The contention that the relation of such companies to their customers is that of landlord and tenant, having no custody or control of the contents of such a box, was successfully made in *People v. Mercantile Safe Deposit Co.*, 143 N. Y. Supp., 849; but this contention was overruled in *National Safe Deposit Co. v. Stead*, 250 Ill., 584; which was affirmed by the Supreme Court of the United States in 232 U. S. 58. These cases all arose under statutes practically identical with section 5348-2 of the General Code of Ohio.

Since the decision of the Supreme Court it is stated by Messrs. Gleason and Otis in their work on *Inheritance Taxation*, p. 253, that—

"Safe deposit companies throughout the Union have acquiesced with the demands of the state for a right to inspect

the contents of safe deposit boxes of decedents."

In other words, it would seem, at least under the ordinary arrangement existing between a safe deposit company or bank and the renters of its safe deposit boxes, that the decision of the Supreme Court of the United States is final and conclusive. This decision followed the New York decision to the contrary, and the statement from the text of Messrs. Gleason and Otis is some evidence of the manner in which the Supreme Court decision was regarded as determining the law of New York.

Aside from these considerations it is very clear that the statute at least attempts to reach transactions of this sort. Nothing could be clearer than this when regard is had to the language above quoted. For example, it is provided that—

"No safe deposit company * * * having in * * custody * * in part securities * * belonging to * * * a decedent * * * shall deliver * * * the same to any person whatsoever."

The general assembly could have been thinking of nothing except safe deposit boxes and bonds and other like securities when it employed this language.

It is therefore the opinion of this department that under section 5348-2 G. C. a safe deposit company or bank renting a safe deposit box cannot allow the personal representatives of a deceased renter of the box to take securities like coupon bonds from the box without incurring the liability mentioned in section 5348-2, unless the further provisions of that section are complied with.

✽

Where a Prosecuting Attorney in the Performance of His Official Duties and in the Furtherance of Justice, Incurs Expenses in Connection With the Hire of an Automobile or in the Purchase of Gasoline and Oil for His Own Automobile, Such Expenses are Payable Out of the Fund Provided by Section 3004 General Code and not Otherwise.

No. 712—(Opinion Dated October 18, 1919.)

Hon. Allen J. Seney, Prosecuting Attorney, Toledo, Ohio.

Dear Sir: I have your letter of recent date reading in part as follows:

"Is there any way in which you could figure out that the Prosecuting Attorney can have the use of an automobile that the County could pay for same without this expense coming from the Prosecutor's special fund?

I believe that you have already ruled that when the

Prosecutor owns a machine, it is perfectly right and proper for him, while on business for the County, to charge the actual expense and upkeep of the machine, while so engaged, to the County, but is this paid out of the Prosecutor's special fund or does the County pay for it?"

What you speak of as the prosecutor's special fund is that provided for by section 3004 G. C., which in part reads as follows:

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by section 2914, an amount equal to one-half the official salary, to provide for expense which may be incurred by him in the performance of his official duties and in the furtherances of justice, not otherwise provided for * * ."

Former opinions of the attorney general, on the subject of the payment of expenses incurred by a prosecuting attorney in the use of an automobile, hold:

(1) That a prosecuting attorney may hire an automobile when necessary in the discharge of his official duties and in the furtherance of justice, and may pay the expense of such hire out of the fund provided by section 3004 G. C. (Opin. of Atty. Gen. for 1917, Vol. I, p. 4788).

(2) That a prosecuting attorney may be reimbursed for expenditures for gasoline and oil made by him in connection with the operation of his own automobile upon official business, such reimbursement to be made out of the fund provided by section 3004 G. C. (Opin. of Atty. Gen. for 1918, Vol. I, p. 998).

Each of said opinions goes upon the theory that the expenses in question are properly payable under section 3004 G. C., because they are "not otherwise provided for" by statute. Your question—whether such expenses can be paid by the county from some county fund, rather than out of the section 3004 fund—would, if answered in the affirmative, require a finding that such expenses are otherwise provided for.

After careful search, I fail to find any statute which will permit the expense of an automobile hired or used by a prosecuting attorney in the course of his official duties, save and except section 3004 G. C.

In 1917 the legislature enacted a measure (now known as sections 2412-1 and 2412-2.) G. C. entitled:

"An act authorizing county commissioners to purchase automobiles or other vehicles for the use of county officials in the transaction of public business."

That the real scope of the act is less than that indicated by

the title, is apparent from the fact that the purchase is limited, in the body of the act, to automobiles or other vehicles "for the use of the county commissioners and county sheriff."

Replying directly to your question, I advise you that where a prosecuting attorney, in the performance of his official duties and in the furtherance of justice, incurs expenses in connection with the hire of an automobile or in the purchase of gasoline and oil for his own automobile, such expenses are payable out of the fund provided by section 3004 G. C., and not otherwise.

✱

The First Proportion, and Therefore the Starting Point in Determining Whether or Not There Has Been an Increase in the Proportion of the Company's Capital Stock Represented by Property Used and Business Done in This State Within the Meaning of Section 185 General Code, is the Proportion Contained in the Statement Filed by the Company with the Secretary of State Under Section 185 General Code, at the Time It Seeks Admission to Do Business in This State. Thereafter, and as Often as the Company Shall Have Increased the Proportion of Its Capital Stock Represented by Property Used and Business Done in This State, Just so Often Must an Additional Statement Be Filed and a Fee Paid on the Amount of the Increase.—In Determining Whether or Not an Additional Statement is Required to be Filed and a Fee Paid Under Section 185 General Code, the Following Rule Should be Adopted.—Determine the Present Proportion of the Company's Capital Stock Represented by Property Used and Business Done in Ohio, From the Additional Statement Which the Company is Proposing to File, and if the Proportion Therein Stated is Greater in Amount Than the Proportion Stated in the Last Statement Filed With the Secretary of State, (Whether Such Last Statement be the Initial or An Additional Statement), Then the New Additional Statement Should be Filed and a Fee Paid Upon the Increase Over the Amount of the Last Proportion, Then the Filing of an Additional Statement is Not Required.

No. 637—(Opinion Dated September 22, 1919.)

Hon Harvey C. Smith, Secretary of State, Columbus, Ohio.

Dear Sir: Your letter of recent date with respect to the rule to be followed by your office in computing the fee to be paid by a foreign corporation under Section 185 G. C., was duly received, and reads as follows:

"Kindly give me the rule that should be followed by this office in computing the fee for a foreign corporation under Section 185 of the General Code of Ohio.

For example: If an organization has filed several applications for increase under the above section what proportion should be used for giving said company credit for fee heretofore paid? Should the original proportion be used or should the proportion of the last increase filed be used, or should the sum of the original proportion, together with all proportions of increases filed be used in giving said organization credit for the fee heretofore paid?

Section 185 G. C., referred to in your letter provides:

"A corporation which has filed its statement and paid the fee prescribed by the preceding two sections and which thereafter shall increase the proportion of its capital stock, represented by property used and business done in this state, shall file within thirty days after such increase an additional statement with the secretary of state, and pay a fee of one-tenth of one per cent. upon the increase of its authorized capital stock represented by property owned and business transacted in this state."

The statement referred to in the first clause of the statute is the initial statement required by Section 183 G. C., to be filed with the secretary of state by foreign corporations before doing business in this state, setting forth, among other things, the proportion of the capital stock of the corporation represented by property owned and used and by business transacted in Ohio; and the fee referred to is the fee of one-tenth of one per cent. upon the proportion of the company's authorized capital stock represented by property owned and used and by business transacted in this state, to be not less than \$10 in any case.

In 1915 Opinions of Attorney General, Vol. II, page 1768, it was correctly said with reference to the foregoing section that:

"As the section explicitly provides, the fee is to be computed not upon the amount of the authorized capital stock, represented by property owned and business transacted in this state as increased, but upon the increase itself. This means that whenever the 'proportion' of the authorized capital stock of a company represented by its property and business in this state * * * becomes larger than it has been, an additional statement shall be filed and a fee shall be paid, based not upon the new 'proportion,' but upon the difference in amount between such new 'proportion' and the 'proportion' upon which the initial compliance fee, or the last supplementary compliance fee may have been based."

The first proportion, and therefore the starting point in determining whether or not there has been an increase in the proportion of the company's capital stock represented by property used and business done in this state within the meaning of Section 185 G. C., is the proportion contained in the statement filed by the company with the secretary of state under Section 183 G. C. at the time it seeks admission to do business in this state. Thereafter, and as often as the company shall have increased the proportion of its capital stock represented by property used and business done in this state, just so often must an additional statement be filed and a fee paid on the amount of the increase.

In determining whether or not an additional statement is required to be filed and a fee paid under Section 185 G. C. the following rule should be adopted:

Determine the present proportion of the company's capital stock represented by property used and business done in Ohio from the additional statement which the company is proposing to file, and if the proportion therein stated is greater in amount than the proportion stated in the last statement filed with the secretary of state (whether such last statement be the initial or an additional statement), then the new additional statement should be filed and a fee paid upon the increase in such proportion. If there has been no increase over the amount of the last proportion, then the filing of an additional statement is not required.

In other words, the only statements that need be considered by you in computing the fees to be paid under Section 185 G. C. is the last statement which was filed in your office by the foreign corporation, and the new statement which the company is proposing to file.



Probate Courts are Without Authority to Compel the Recording in Their Office of Certified Copies of Foreign Wills and of the Appointment of Executors and Administrators, as a Condition Precedent to the Exercise of Jurisdiction to Determine the Tax in the Case of the Estates of Non-resident Decedents.

No. 640—(Opinion Dated September 22, 1919.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: I acknowledge the receipt of your letter of September 4th enclosing a copy of your Form No. 1 which has been prescribed by the Commission for use solely in connection with the

determination as to the liability to inheritance tax of the succession to stock in Ohio corporations or other Ohio property where the same is part of the estate of a non-resident decedent.

You state that your practice is to have such petition prepared by the legal representatives (executor or administrator) of the estate and forwarded to the Commission, by whom the same is filed in the probate court of the county in which the corporation is located or in which the property may lie.

In this connection you make the following inquiry:

"In the case of a decedent who died testate, must a certified copy of the will and of the appointment of the executor be filed and recorded in the court whose jurisdiction is invoked at the time of or prior to the exercise of such jurisdiction?

In the case of a decedent who died intestate, must a certified copy of the appointment of the administrator similarly be filed and recorded?"

There is nothing in the inheritance tax law requiring a foreign administrator or executor, as a condition of applying to the probate court of the proper county for the determination of the tax, to have a copy of the evidence of his official authority, including in the case of an executor a certified copy of the will, filed and recorded in such court. A certified copy of the will is, of course, necessary in case of testate successions, and such copy is provided for in the Commission's blank form as evidence to accompany the petition.

Foreign executors and administrators are entitled to "commence and prosecute an action or proceeding in any court in this state" in their capacity as such, "in like manner and under like restriction, as a non-resident is permitted to sue." (Section 10769 General Code.)

It is true that a foreign will when offered for probate must be recorded; but I am aware of no authority in the probate court to compel a foreign executor to offer a will for probate as a condition of assessing the tax.

It is the opinion of this department that probate courts are without authority to compel the recordation in their offices of certified copies of foreign wills and of the appointment of executors or administrators, as a condition precedent to the exercise of jurisdiction to determine the tax, in the case of the estate of non-resident decedents.

SUPREME COURT

The State ex rel. McKey, Trustee, v. Cooper, Auditor, et al.

**Mandamus—Writ not to Issue, When—Conditions Precedent—
Right of Relator and Duty of Respondent—Substantial Doubt
Exists, When—Fees Due County Treasurer—Claimed by Trustee
in Bankruptcy, Successor of Assignee for Creditors, and Others.**

1. A writ of mandamus will not be granted to compel a county auditor to issue a warrant upon the county treasurer for the payment of public funds, unless the relator's right is clear, and the act to be enforced is one of legal obligation. (State, ex rel. Gallinger, v. Smith, Auditor, 71 Ohio St., 13, approved and followed).

2. There is a substantial doubt as to the right of a relator, as trustee in bankruptcy, to the fees due the bankrupt for services as county treasurer, where such fees are also claimed by a trustee for creditors appointed to succeed an assignee named in a deed of assignment executed and delivered by such treasurer, and are further claimed by persons to whom they were assigned by him in writing before the deed of assignment was filed or bankruptcy proceedings commenced, and where it also appears that the fees in dispute have been paid upon order of court to a receiver appointed upon a motion in aid of execution filed in an action against such treasurer in his individual capacity prior to the assignment and bankruptcy proceedings, in which action the defendant treasurer in his individual capacity was duly and legally served with summons. (State, ex rel. Hildebrant, v. Stewart, 71 Ohio St., 55, approved and followed).

(No. 15484—Decided February 25, 1919.)

In Mandamus.

This is an original proceeding in mandamus instituted on relation of Frank M. McKey, as trustee in bankruptcy of Peter Parker, a bankrupt, against the defendants, Gabe F. Cooper, as auditor of Lucas county, Ohio, and Clarence L. Conlisk, treasurer of said county, to compel the issue and payment of a warrant or warrants covering sundry official fees, accruing, at six semi-annual intervals between February 1909 and August 1911, to Peter Parker, for commission upon moneys collected as a result of suits instituted by him as treasurer of Lucas county, upon which collections Parker was allowed five per cent. in the semi-annual settlements above stated.

The petition contains six causes of action, each based upon the separate semi-annual settlements, the first being the settlement of February 1909, upon which he was allowed fees aggregating \$2811.08 upon the proceeds of four separate judgments against The Toledo Railway & Light Company, collected November 17, 1908, to January 12, 1909.

On May 15, 1908, judgments were entered in these four cases mentioned in the first cause of action, and on motion of Peter Parker, by his attorney William G. Ulrey, the court declared his fees of \$2811.08 a lien on these judgments, less \$702.77 which the court declared to be a lien in favor of Ulrey, attorney, to compensate him for his services in these actions.

The First National Bank of Bellevue obtained a judgment against Peter Parker in cause No. 55335 in the court of common pleas of Lucas county, Ohio, upon which judgment execution was issued and returned unsatisfied.

On May 19, 1908, after the court of common pleas had declared the fees of Peter Parker a lien upon the proceeds of the judgments he had secured against The Toledo Railways & Light Company, the bank sought to subject this and other fees due to Peter Parker, as treasurer, to the payment of its claim, by a motion in aid of execution filed in cause No. 55335, whereupon the court entered an order restraining the county auditor, county treasurer, The Railways & Light Company, and others named in the motion, from transferring, delivering, or in any way disposing of any property, money or credits of Peter Parker, and requiring them to appear and answer concerning the same. A copy of this order was served upon the auditor, treasurer and The Railways & Light Company and others, but no copy or other notice was served upon Peter Parker, except the original summons in that action.

On June 10, 1908, the court appointed Chambers, the then sheriff, receiver, and ordered Biddle, the then treasurer, to pay to the said receiver the funds of Peter Parker coming into his hands by virtue of the lien theretofore granted Parker in the four cases against The Railways & Light Company, except the amount of Mr. Ulrey's claim, and further restrained Biddle, treasurer, and other codefendants, from transferring, delivering, or in any way disposing of any property, money, or credits of Peter Parker, except as aforesaid.

On May 26, 1908, The First National Bank of Bellevue commenced a civil action in aid of execution, being cause No. 58844 on the civil docket of the court of common pleas of Lucas county, the object of which was to reach the interest of Parker in the judgments in the four cases against The Railways & Light Company.

Peter Parker, the county treasurer, the sheriff, and others, were made defendants, and all served with summons except Peter Parker, who was then a nonresident of the state. In that case the court found that these judgments had been paid and that Biddle,

as treasurer, in pursuance of the order of the court entered in cause No. 55335, had paid to Chambers, who had been appointed receiver in that case, the amount or proportion of the judgments found to be due Parker, and declared to be a lien upon these funds and that the same should be applied by Newton, successor of Chambers, to the payment of the judgment due to the Bellevue bank.

It was further ordered and adjudged that a warrant for \$627.97 be drawn upon the county treasurer in favor of The First National Bank of Bellevue, and paid to that bank upon its judgment. This amount represented the fees of Parker on other judgments recovered by him as treasurer of Lucas county.

In 1911 Peter Parker returned to Toledo and there made an assignment for the benefit of his creditors. The assignee, Robert G. Young, also claims this fund, but has filed no answer in this cause.

Messrs. Hall, Flowers & Cotter and Mr. Ben W. Johnson, for relator.

Mr. John C. D'Alton and Mr. Allen J. Seney, for respondents.

Messrs. Tracy, Chapman & Welles and Mr. Harry E. King, for the First National Bank of Bellevue.

Donahue, J. The relator asks that a writ of mandamus issue out of this court, commanding the defendant, Gabe F. Cooper, as auditor of Lucas county, to deliver to the relator his warrant on the defendant, Clarence L. Conlisk, as treasurer of Lucas county, for the amount of the official fees of Peter Parker, as treasurer, accruing at six semi-annual intervals between February 1909 and August 1911, aggregating \$3467.29; and commanding the defendant, Clarence L. Conlisk, as treasurer of Lucas county, to pay such warrant.

While a writ of mandamus will issue against a public officer to compel the performance of an official duty enjoined upon him by law, yet such writ will not be granted unless the relator's right is clear and the act to be enforced is one of absolute obligation. (State, ex rel. Gallinger, v. Smith, Auditor, 71 Ohio St., 13.) Where there is a substantial doubt as to the relator's right, the writ will be refused. State, ex rel. Hildebrandt, v. Stewart, Id., 55.

An action in mandamus will not lie against the treasurer, Clarence L. Conlisk, until he has refused to perform an official act enjoined upon him by law. He could neither pay nor refuse payment except upon the presentation of a proper warrant issued by the auditor of Lucas county. This petition necessarily concedes

that no such warrant has ever been issued. Therefore, the writ as to the treasurer, Conlisk, must be refused.

From averments of the petition it appears that these fees were ascertained to be due to Peter Parker, former treasurer of Lucas county, at the six semi-annual settlements between February 1909 and August 1911. So far as the defendant, Gabe F. Cooper, as auditor of Lucas county, is concerned, this is the only official record upon authority of which he is authorized to issue such vouchers. If the statutes of Ohio enjoin any duty upon him, it is the duty of issuing to Peter Parker warrants upon the county treasurer in the amounts named. It is conceded, however, by all the parties to this suit, that Peter Parker is not now entitled to have such vouchers issued to him. These fees are now claimed by the relator, as trustee in bankruptcy of Peter Parker, and also by Robert G. Young, as trustee for the creditors of Peter Parker, successor to the assignee named in a deed of assignment.

This trustee has also commenced a similar action in the common pleas court of Lucas county against the county auditor, asking that a writ of mandamus issue out of that court, commanding the county auditor to issue to him a voucher for the sum of \$2061.75, being a part of the same fund demanded by the relator in this action.

It further appears by the answer to the sixth cause of action, and the admission in the reply, that some of counsel representing the relator in the present proceeding also represent Young, trustee, in the action in the common pleas court of Lucas county. It would therefore appear that even in the minds of counsel for relator and Young there exists a substantial doubt as to the proper person entitled to receive these warrants.

However that may be, the fact that both the trustee in bankruptcy and the trustee in the assignment proceeding are presumably in good faith making claim to these fees is sufficient to justify the county auditor in refusing to issue the warrants to relator until a court of competent jurisdiction determines which claimant is lawfully entitled to receive the same; for, regardless of the ultimate decision that may be reached, the auditor is not required to decide at his peril which of these trustees is entitled to receive this fund; and especially is this true where the record upon which he must base his action shows that the fees belong to Peter Parker, and each trustee makes the claim that under and by virtue of his respective appointment he has succeeded to all the rights and interest of Peter Parker therein.

The question of the relator's right to this fund is further complicated by the fact that the auditor of Lucas county has issued his warrant, and the treasurer of Lucas county has paid this fund, upon the order of a court of competent jurisdiction, to a receiver appointed by that court. In answer to this, however, it is contended on the part of the relator, that the common pleas court did not have jurisdiction of the person of Peter Parker, for the reason that he was not served with summons in cause No. 58844. That is perhaps true, but that case may be wholly disregarded in the determination of the issue joined in this action.

In the action of The First National Bank of Bellevue against Peter Parker, No. 55335 on the docket of the common pleas court of Lucas county, Peter Parker was duly and legally served with summons.

On June 10, 1908, the court of common pleas in cause No. 55335, appointed Chambers receiver, and ordered the county treasurer to pay to the receiver the funds of Peter Parker, coming into his hands by virtue of the lien theretofore granted by the common pleas court of Lucas county to Parker at his request, in the four cases against The Railway & Light Company.

It is absolutely of no importance in the disposition of this case whether the court of common pleas erred either in decreeing that Parker's fees should be a lien upon the proceeds of the judgments in the four cases against The Railways & Light Company, or whether it erred in its order appointing a receiver and ordering the county treasurer to pay these funds to the receiver. Parker was a party to all of these suits. The judgment in each of these cases finally and fully adjudicated the rights of all the parties thereto, and is binding not only upon Peter Parker himself, but upon all persons claiming under him.

In cause 58844, in which action Parker was not served with summons, an examination of the docket and journal entries shows that the court found specifically that these judgments, the four judgments against The Railways & Light Company, had been paid, and that Biddle, as treasurer, in pursuance of the order of the court entered in cause No. 55335, had paid to Chambers, receiver, the amount found to be due Parker in each of these Railways & Light Company cases and declared to be a lien upon the proceeds of the judgments entered therein.

It therefore appears that these funds were not paid by the treasurer of Lucas county to the receiver appointed in cause No.

55335 upon any order of court made in cause No. 58844, but were paid to him upon the order made in cause No. 55335, in which cause the receiver was appointed, and in which cause Parker had been duly and legally served with summons. So that, as far as the fees due Parker from the proceeds of the four judgments against The Railways & Light Company are concerned, the defense of the auditor does not rest upon any order made in cause No. 58844, but, on the contrary, upon the order made in cause No. 55335.

The right of the relator to this fund, or any part of it, is doubtful for the further reason that on March 17, 1906, prior to the appointment of the relator as trustee in bankruptcy proceedings, and prior to the date of the assignment made by Parker for the benefit of his creditors, Parker assigned in writing to The Toledo Bank the fees due him from Lucas county upon moneys recovered by him in the several actions described in the petition. In the same year he also assigned the same funds to William Mattison. These assignments were made by Parker presumably in good faith. He at least attempted to part with his right under the statute of his state to demand that the auditor of Lucas county issue to him a voucher covering these fees. The county auditor is not required to determine the validity of these assignments, nor is he required to determine whether they take precedence over the judgment and orders of the common pleas court in favor of The First National Bank of Bellevue in cause No. 55335.

Even if no bankruptcy proceedings had been commenced, and Parker had made no deed of assignment for the benefit of his creditors, he would now be in no position to demand that the auditor issue him a voucher for the fees that he had attempted to assign to The Toledo Bank and to William Mattison. Under such circumstances, the county auditor would have a clear right to refuse to issue to Parker any warrant upon the county treasurer until Parker had determined by action the validity or invalidity of the purported assignments. Certainly Parker's trustee in bankruptcy, or the trustee in the assignment proceedings, is in no better position than Mr. Parker would be if such trustees had never been appointed.

Whenever by his own act, or the action of a court of competent jurisdiction in a proceeding in which he has been duly and legally served with summons, the right of Parker to demand and receive such warrant and payment of the same from the county treas-

urer is rendered doubtful or uncertain, mandamus will not lie upon his relation, nor will it lie to settle the rights of rival claimants claiming under him.

The rights of these respective claimants must first be determined in an action at law, and not in an action in mandamus against the county auditor, who is not concerned in their dispute, but is concerned in protecting the county from the payment of public funds to persons not entitled to receive the same.

Section 12287 specifically provides that "The writ must not be issued in a case where there is a plain and adequate remedy in the ordinary course of the law." In this case there is a plain and adequate remedy at law, where the rights of the county and every claimant to this fund can be fully protected and full and complete relief afforded. The relator has not shown a clear legal right to the relief sought. On the contrary, there is at least a substantial doubt as to his right to this fund or any part of it, and therefore a writ of mandamus will be refused and the petition of the relator dismissed at his cost.

Writ refused.

Jones, Matthias, Johnson, Wanamaker and Robinson, JJ., concur.

SYLLABI OF REPORTED CASES

16198—Augusta Kasch, Suing for the Benefit and on Behalf of Herself and Others, vs. The City of Akron and William M. Graham, as Auditor of Summit County. Error to the Court of Appeals of Summit County.

DONAHUE, J.

1. Where it is proposed by the council of a municipality to levy and collect special assessments for any part of the cost and expenses connected with or made for changing the channel of, or narrowing, widening, dredging, deepening or improving any stream of water or water course, under the provisions of Section 3812, General Code, the further provision of that section requiring the council to declare that such improvement will be conducive to the public health, convenience or welfare is mandatory.

2. It is essential to the validity of proceedings ordering such improvements, that plans, specifications, estimates and profiles of the proposed improvement shall be on file in the office of the director of public service in cities, or the clerk in villages, at the time of the passage of the resolution

declaring such improvement necessary.

3. Where, through no fault of the city, the owner of private premises permits stagnant water to be and remain upon his land, thereby endangering the public health, a municipality has the authority to order and direct such private proprietor to abate the nuisance on his own land, and upon his failure to do so may enter upon the premises and abate such nuisance and assess the cost thereof against the land. (Bliss et al. vs. Kraus, 16 Ohio St., 54, approved and followed.)

4. A municipality has no authority to enter upon private property for the purpose of constructing a permanent sanitary and surface-water sewer thereon, which, when constructed, will become public property and a part of the sewer system of the city, without first making compensation to the owner of the private property taken for such public use. (City of Mansfield vs. Balliett, 65 Ohio St., 451, approved and followed.)

Judgment reversed.

Nichols, C. J., Jones, Matthias, Johnson, Wanamaker and Robinson, JJ., concur.

MOTION DOCKET

10190. Charm N. Cline et al., Trustees, v. Andrew H. Trout. Motion by defendant to dismiss petition in error in cause No. 16298 on the general docket. Sustained.

10191. The Mahoning & Shenango Ry. & Light Co. v. Margaret R. Campbell. Motion by defendant to dismiss petition in error in cause No. 16318 on the general docket. Sustained.

10192. The Mahoning & Shenango Ry. & Light Co. v. Nancy Liddle. Motion by defendant to dismiss petition in error in cause No. 16319 on the general docket. Sustained.

10193. The Cleveland Machinery & Supply Co. v. The Willys-Overland Co. Motion for an order directing the Court of Appeals of Cuyahoga County to certify its record. Overruled.

10194. Dominic Marfitano v. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Stark county. Overruled.

10195. Sam Castanzo v. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Stark county. Overruled.

10281. The W. E. Wright Co. v. S. W. Parshall et al. Motion for an order directing the Court of Appeals of Summit county to certify its record. Overruled.

10284. Elihu Snider, Guardian, v. Emma Gustin. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

10286. Wayne Coal Co. et al. v. W. S. Hunt et al. Motion for an order directing the Court of Appeals of Jefferson county to certify its record. Overruled.

10290. Alvin C. Austin v. Mary D. Huffman et al. Motion for an order directing the Court of Appeals of Wood county to certify its record. Overruled.

10291. James I. McCullough et al. v. Edward F. Luteman. Motion for an order directing the Court of Appeals of Knox county to certify its record. Overruled.

10292. John Miller v. Robert E. Miller. Motion for an order directing the Court of Appeals of Fulton county to certify its record. Overruled.

10293. The Paige Dairy Co. v. Fred erick H. Affield. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

10295. William J. Morris, alias William Wilson, et al. v. Rebecca Foltz. Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Overruled.

10296. Theresa Strassel v. The Industrial Commission of Ohio. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

10297. City of Cincinnati v. The Stock Yards Bank & Trust Co. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

10298. City of Sandusky v. The B. & O. R. R. Co. et al. Motion for an order directing the Court of Appeals of Erie county to certify its record. Sustained.

10300. Rachel Williamson et al. v. George H. Worch. Motion for an order directing the Court of Appeals of Darke county to certify its record. Overruled.

10301. The Sterling Specialty Co. v. George S. Bowes, et al. Motion by defendant to dismiss petition in error in cause No. 16396 on the general docket. Sustained.

SECRETARY OF STATE

NEW CORPORATIONS

T. I. Wilson Co., Toledo, \$50,000.
John O. O'Connor, Harry T. Rosecrans, William McDonough, Julius Levy, Thomas L. Wilson.

Hoynesite Explosives Co., Cleveland, \$150,000. Wm. J. Hoynas, Harry C. Downey, Milton Freshwater, Francis P. Fremont, A. L. Welch.

Standard Development Co., Cleveland, \$10,000. M. J. Gainor, J. M. Bates, C. A. Miller, J. E. Crocker, M. E. Stein.

West Virginia Timber Co., Cleveland, \$2,400,000. Alonzo M. Snyder, Robert E. Roehm, Harotia Ford, M. A. Maroni, N. I. Young.

Frazier-Elms-Sheal Co., Cleveland, \$10,000. C. W. Sellers, J. Frank Pease, David A. Gaskill, Robert F. Bingham, Elmore A. Andrews.

Brighton Co., Lakewood, \$50,000. R. R. Alexander, Arthur Welsh, R. P. Ransom, S. A. Pritchard, Margaret N. Valentine.

Kroghan Kar Kompany Incorporated, Fremont, \$10,000. John W. Barr, Forrest L. Barr, Lawrence F. Barr, Don L. Gessner, W. O. Shannon.

H. R. Strueve Realty Co., Cincinnati, \$100,000. H. R. Strueve, L. Lucking, G. B. Judy, William Lucking, M. Burner.

Haggard & Schubert Co., Cincinnati, \$10,000. Henry Beebe, Elmer L. Conway, Walter D. Murphy, B. F. Morrison, C. L. Borsch.

John H. Decker Realty Co., Youngstown, \$50,000. H. A. Zellers, D. D. W. F. Parsell, Howard C. Corll, W. C. McClain, Arthur W. Gifford, Gu T. Ohl, John H. Decker, Charles A. Gifford, Wm. Rowland, Harry H. Eager, Claude A. Lee.

Cash Coal and Coke Co., Napoleon, \$50,000. David Hartigan, James V. Mullen, Fred E. Kaser, Theo. Daman, Lee O. Bracy.

Ferro Enameling Co., Cleveland, \$1,000. C. M. Horn, L. B. Davenport, Charles Follett, Orville Smith, Alfred Kelley.

Hamel Brothers Co., Columbus, \$150,000. J. W. Hamiel, E. E. Mamiel, Charles N. Davis, C. H. Vance, F. E. Peck.

Canton-Detroit Foundry Co., Canton, \$50,000. A. E. McCuskey, Willard J. Frey, R. B. Borne, C. A. Fisher, M. L. Eckelberry.

Hostetter-Pearse Realty Co., Cleveland, \$25,000. L. J. Hostetter, H. B. Pearse, Albertine J. Hostetter, Margaret H. Pearse, Anna Woroz.

Lakewood Foundry Co., Cleveland, \$20,000. M. Garber, A. Goldman, C. D. Reich, H. H. Felsman, G. W. Poppleton.

Anderson & Heyer Co., Springfield, \$15,000. Roy F. Anderson, Charles E. Heyer, Carl Dyce Yount, John M. Powell, J. C. Powell.

Columbia Coal and Power Co., Canton, \$75,000. L. B. Blanchard, N. E. Wise, F. E. Schumacher, M. M. Guiley, M. O. Anderson.

Chicago Nut Manufacturing Co., Cleveland, \$300,000. W. S. Quinlan, George Holbrook, Harold T. Mosier, C. H. Burkner, F. W. Crandall.

Fairlawn Reserve Development Co., Akron, \$100,000. W. J. Ruof, George H. Dunn, E. R. Held, E. O. Handy, H. H. Gibbs.

Brant Realty Co., Cleveland, \$10,000. L. Menzo Simpson, Zaida C. Simpson, Hugo Braunlich, Mabel M. Clark, Margaret L. Lathers.

Molly Pitcher Candy Co., Cleveland, \$60,000. W. C. Kelley, M. L. Harrington, E. P. Schlosser, H. J. A. Hackenberg, A. F. Larabee.

Special Auto Service Co., Cleveland, \$100,000. L. H. McCleary, Harry N. Kraft, Fredk. W. Green, Cyrus Locher, Catherine Carroll.

Sandusky Land and Building Co., Sandusky, \$10,000. E. W. Clark, Wm. F. Nank, Harry F. Hahn, A. M. Mander, B. E. Hoffman.

First State Bank of Lorain, Ohio, \$50,000. George Oroszy, Samuel Goldstein, A. V. Hageman, Joseph Jamieson, J. G. Bachman.

United Grinding Co., Cleveland, \$25,000. E. H. Rooke, E. P. Schlesser, W. C. Kelley, N. L. Harrington, Alfred A. Benesch.

Modern Pattern Co., Columbus, \$5,000. Adolph E. Tietze, John F. Yoakum, A. Floyd Wise, Wm. R. Carroll, Charles H. Smith.

Bloxons Co., Cincinnati, \$30,000.
Lulu McAtee, Henry L. Brown, F. C. Lackner, Charles Sawyer, F. E. McConaughy.

Citizens Real Estate and Produce Co., Lima, \$10,000. L. R. Mitchell, R. S. Patterson, T. D. Maithcock, Jas. Maithcock, P. C. Masterson, William L. Edwards.

C. R. Patterson Sons Co., Greenfield, \$50,000. Fred Patterson, John R. Rudd, Dollie Rudd, John Simms, Alvah E. Bell, Robert Nichells.

Toledo Mortgage Co., Toledo, \$500,000. Al. E. Reuben, Zale A. Reuben, John J. Reuben, Harold A. King, William C. Rowe.

Highbee-Rose Co., Cleveland, \$10,000. F. H. Pelton, Jos. W. Kennedy, George B. Folk, E. L. Chester, Edwin E. Miller.

Hill-Brown Printing Co., Hamilton, \$50,000. E. Vernon Hill, Robert J. Brown, Sr., Walter M. Atherton, Robt. J. Brown, Jr., M. S. Wick.

Lawton Co., Cincinnati, \$150,000. Alma Lawton, Ruth Johnson, A. L. Quill, John C. Hermann, Edwards Ritchie.

Ohio Laboratories Co., Akron, \$10,000. Jacob D. Roseman, George M. Klasen, Irwin D. Allen, Lee M. Baron, Lloyd R. Read.

Witwer-Russell Co., Akron, \$200,000. R. C. Witwer, F. Russ, C. F. Schnee, Joseph Thomas, John C. Grimm.

Quick Service Auto Laundry Co., Cincinnati, \$5,000. Edgar Biggs, E. H. Lostetter, Charles Leiblich, C. V. Markland, T. E. Lostetter.

1900 Euclid Building Co., Cleveland, \$1500. A. R. Callow, C. L. Smith, W. H. Kirby, Harold T. Clark, Paul J. Bickel.

Zanesville Publishing Co., Zanesville, \$400,000. W. O. Littick, C. M. Gibson, Robert Ellsperman, C. T. Marshall, E. F. O'Neal.

Lipp-Cleveland Knitting Co., Cleveland, \$50,000. Emanuel Lipp, Angela Harhaus, A. O'Connor, W. H. Blaue, A. J. Farber.

National Furniture Manufacturing Co., Cleveland, \$15,000. Alfred A. Benesch, E. H. Hopkins, M. L. Harrington, E. P. Schlosser, E. H. Rooke.

Middle Bass Club Co., Middle Bass, \$10,000. Henry W. Tappe, Miles E. Evans, F. E. Vormelker, Louis Barnes, O. D. Eshelman.

Motor Bus Co., Cleveland, \$27,500. R. H. York, W. J. Fleharty, E. A. Anerbach, Roy F. York, H. B. Fleming.

Increases

Ira D. Washburn Co., Cleveland, \$50,000 to \$150,000.

Standard Metal Goods Co., Cleveland, \$10,000 to \$50,000.

Cannon Manufacturing Co., Columbus, \$30,000 to \$50,000.

New Franklin Electric Light Co., New Franklin, \$2500 to \$2500.

Toledo Rex Spray Co., Toledo, \$100,000 to \$200,000.

Youngstown Boiler and Tank Co., Youngstown, \$50,000 to \$100,000.

Universal Glove Co., Toledo, \$200,000 to \$300,000.

Altman Furniture Co., Cleveland, \$60,000 to \$100,000.

Pleasantville Window Sales Co., Pleasantville, \$30,000 to \$75,000.

Model Food Stores Co., Akron, \$25,000 to \$250,000.

Hugo Stein Cloak Co., Cincinnati, \$100,000 to \$200,000.

American Construction Co., Cleveland, \$50,000 to \$150,000.

Electric Construction and Sales Co., Cleveland, \$75,000 to \$150,000.

Morse Building Co., Cleveland, \$80,000 to \$100,000.

Silsby Realty Co., Cleveland, \$25,000 to \$100,000.

Buckeye Investment Co., Columbus, \$50,000 to \$300,000.

Windermere Transfer and Moving Co., Cleveland, \$10,000 to \$75,000.

Pemberville Elevator Co., Pemberville, \$25,000 to \$50,000.

Ohio Drilling Co., Massillon, \$20,000 to \$100,000.

Madison Oil & Gas Co., Youngstown, \$20,000 to \$300,000.

Aetna Steel Castings Co., Cleveland, \$99,000 to \$300,000.

Reserve Savings & Loan Co., Cleveland, \$100,000 to \$1,000,000.

Cleveland Trust Co., Cleveland, \$2,500,000 to \$4,000,000.

Mason Milling Co., Mason, \$15,000 to \$50,000.

Dayton Display Fixture and Novelty Co., Dayton, \$25,000 to \$100,000.

Royal Five and Ten-Cent Stores Co., Cleveland, \$50,000 to \$150,000.

Decrease

American Audit Co., Cincinnati, \$25,000 to \$2,500.

Bahmann Iron Works Co., Cincinnati, \$100,000 to \$10,000.

PUBLIC UTILITIES COMMISSION

No. 1306—In the Matter of the Application of Mahoning and Shenango Railway and Light Company for Authority to Issue and Sell Its Preferred Stock. Order on Seventh Supplemental or Substitute Application.

(Dated October 27, 1919)

This day this matter came on for further consideration upon a pleading proffered for filing under the caption, "In the matter of the application of Mahoning and Shenango Railway and Light Company for authority to issue and sell \$267,800.00, of its first and consolidated mortgage gold bonds" but, for the purposes of this commission, filed as the seventh supplemental or substitute application herein; such supplemental petition asking the consent and authority of the commission for the issue and sale of applicant's first and consolidated mortgage, Series B, six per cent. bonds of the principal sum of two hundred and sixty-seven thousand, eight hundred dollars, the proceeds thereof to be used to reimburse applicant's treasury for eighty percentum of the money, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction of additions, extensions and improvements to its facilities between December 1, 1918, and August 31, 1919:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon.

(1) That, within the period December 1, 1918, and August 30, 1919, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$334,856.48, none of which was procured by the issue of stock, bonds, notes or other evidence of indebtedness;

(2) That, the applicant now having bonds outstanding in excess of its issued and outstanding capital stock, the issue of the bonds herein sought to be authorized in excess of its outstanding capital stock, and the expenditure of the proceeds of such excess, should be specifically consented to, authorized and approved, and

(3) That the issue of the bonds herein sought to be authorized is reasonably required, and the money to be procured thereby necessary for the reimbursement of applicant's treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within five years next preceding the date of the filing of the instant application, for the construction, completion, extension and improvement of its facilities.

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That the said Mahoning and Shenango Railway and Light Company be, and hereby it is authorized to issue, in addition to the bonds and capital stock heretofore authorized in this proceeding, its first and consolidated refunding mortgage, Series B, six per cent. gold bonds of the principal sum of two hundred and sixty-seven thousand and eight hundred dollars (\$267,800.00), and that said bonds be sold for the highest price obtainable, but for not less than ninety (90) percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the issue of said bonds in excess of applicant's outstanding capital stocks, and the expenditure of the proceeds of such excess as hereinafter provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said bonds be devoted to and used for the following purposes, and no other, to-wit: Applied toward the reimbursement of applicant's treasury for the 80 percentum of the sum of \$334,858.48 (not procured by the issue of stocks, bonds, notes or other evidences of indebtedness) expended therefrom, within the period December 1, 1918, to August 31, 1919, for the construction of additions, extensions and improvements to its facilities, as more fully set forth in the detailed statement, marked Exhibit A, appended to the instant application herein, which exhibit hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within 15 days after the close of each calendar semi-annual period, of the issue and disposition of bonds under the authority herein granted, and of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1306—In the Matter of the Application of Mahoning and Shenango Railway and Light Company for Authority to Issue and Sell Its Preferred Stock. Order on Sixth Supplemental or Substitute Application.

(Dated October 27, 1919)

This day, this matter came on for further consideration upon a pleading proffered for filing under the caption, "In the matter of the application of Mahoning and Shenango Railway and Light Company for authority to issue and sell \$184,000.00 of its first and consolidated mortgage gold bonds" but, for the purposes of this commission, filed as the sixth supplemental or substitute application herein; such supplemental petition asking the consent and authority of the commission for the issue and sale of applicant's first and consolidated mortgage, Series B, six per cent. bonds of the principal sum of one hundred and eighty-four thousand dollars, the proceeds thereof to be used to reimburse applicant's treasury for 80 percentum of the money, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction of additions, extensions and improvements to its facilities between December 1, 1918 and August 31, 1919:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That, within the period December 1, 1918, and August 31, 1919, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$230,065.93, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness;

(2) That, the applicant now having bonds outstanding in excess of its issued and outstanding capital stock, the issue of the bonds herein sought to be authorized in excess of its outstanding capital stock, and the expenditure of the proceeds of such excess, should be specifically consented to, authorized and approved, and

(3) That the issue of the bonds herein sought to be authorized is reasonably required, and the money to be procured

thereby necessary for the reimbursement of applicant's treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within five years next preceding the date of the filing of the instant application, for the construction, completion, extension and improvement of its facilities.

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That the said Mahoning and Shenango Railway and Light Company be, and hereby it is authorized to issue, in addition to the bonds and capital stock heretofore authorized in this proceeding, its first and consolidated refunding mortgage, Series B, six per cent. gold bonds of the principal sum of one hundred and eighty-four thousand dollars (\$184,000.00), and that said bonds be sold for the highest price obtainable, but for not less than ninety (90) percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the issue of said bonds in excess of applicant's outstanding capital stocks, and the expenditure of the proceeds of such excess as hereinafter provided be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said bonds be devoted to and used for the following purpose, and no other, to-wit:

Applied toward the reimbursement of applicant's treasury for the reimbursement of 80 percentum of the sum of \$230,085.93 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, within the period December 1, 1918, to August 31, 1919, for the construction of additions, extensions and improvements to its facilities, as more fully set forth in the detailed statement, marked Exhibit A, appended to the instant application herein, which exhibit hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within 15 days after the close of each calendar semi-annual period, of the issue and disposition of bonds under the authority herein granted, and of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1723—In the Matter of the Application of The Mansfield Telephone Company for Authority to Issue \$109,150.00, Par Value, of Its Common Capital Stock. Prayer Granted.

(Dated October 25, 1919)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Mansfield Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and deliver, as fully paid and non-assessable, to the Central Union Telephone Company, common capital stock of the par value of one hundred and nine thousand, one hundred and fifty dollars in full and final payment of the consideration for certain property of the said Central Union Telephone Company, being principally the local exchange property at Mansfield, Ohio, the purchase of which, by the applicant, was duly consented to and authorized by the order, this day made and entered, in proceeding No. 1492:

Upon consideration whereof, and being fully advised in the premises, the commission finds that said property, to be acquired by the applicant, is reasonably worth the par value of the capital stock to be issued in payment therefor, and that the issue of said capital stock is reasonably required and necessary for the acquisition of said property, and is satisfied that its consent and authority for such issue and disposition of said capital stock should be granted. It is therefore,

Ordered, That said The Mansfield Telephone Company be, and hereby it is authorized to issue its common capital stock of the total par value of one hundred and nine thousand, one hundred and fifty dollars (\$109,150.00). It is further

Ordered, That said capital stock be issued and delivered to the Central Union Telephone Company as fully paid and non-assessable, in full and final payment of the consideration for the property, the purchase of which, by the applicant, was duly consented to and authorized by the order, this day made and entered, in proceeding No. 1492, which order hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock pursuant to the terms and conditions of this order.

And the commission, coming now to consider the acceptance of, and holding by the said Central Union Telephone Company of the aforesaid capital stock of The Mansfield Telephone Company, finds, for the purposes of this proceeding, that the convenience of the public will be promoted by said acceptance and holding of said capital stock and that the public thereby will receive adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for such acceptance and holding of said capital stock should be granted. It is therefore, further

Ordered, That the said Central Union Telephone Company be, and hereby it is authorized to accept and hold the aforesaid capital stock of The Mansfield Telephone Company. It is further

Ordered, That the finding hereinbefore set forth as to service shall not be binding upon this commission in any future proceeding involving said matter.

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No. 1748—In the Matter of the Application of The Champaign County Telephone Company for Authority to Issue \$150,000.00 of Its Common Capital Stock. Prayer Granted.

(Dated October 10, 1919)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Champaign County Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and deliver, as fully paid and nonassessable, its common capital stock of the par value of one hundred and fifty thousand dollars in full and final payment of the consideration for the property and assets of The Urbana Telephone Company, the purchase of which, by applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 1744:

Upon consideration whereof, and being fully advised in the premises, the commission finds that the value of the property

and assets so to be acquired of The Urbana Telephone Company is not less than the sum of \$150,000.00 and that the issue of said capital stock is reasonably required and necessary for the acquisition, by the applicant, of the aforesaid property, and is satisfied that consent and authority therefor should be granted. It is, therefore,

Ordered, That said The Champaign County Telephone Company be, and hereby it is authorized to issue its common capital stock of the total par value of one hundred and fifty thousand (\$150,000.00). It is further

Ordered, That said capital stock be issued and delivered, as fully paid and non-assessable, to The Urbana Telephone Company in full and final payment of the consideration for the property to be acquired under authority of the order this day made and entered in proceeding No. 1744, which order hereby is made a part of this order by reference, nor shall said capital stock be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock pursuant to the terms and conditions of this order.

And the commission, coming now to consider the matter of the acceptance, by said The Urbana Telephone Company, of the aforesaid capital stock of The Champaign County Telephone Company and the holding of the same until its affairs can be wound up and itself dissolved, finds, for the purposes of this proceeding, that the convenience of the public will be promoted by such acceptance and holding of said capital stock and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for such acceptance and holding of said capital stock by The Urbana Telephone Company should be granted. It is, therefore, further

Ordered, That said The Urbana Telephone Company be, and hereby it is authorized to accept said capital stock of The Champaign County Telephone Company and to hold the same until such time as its assets shall have been distributed among its owners and itself dissolved. It is further

Ordered, That the finding as to service hereinbefore set forth shall not be binding upon this commission in any future proceeding involving said matter.

No. 1632—In the Matter of the Application of The Cincinnati and Suburban Bell Telephone Company and The Felicity Home Telephone Company to Buy, Sell and Exchange Property. Prayer Granted.

(Dated October 8, 1919)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of The Cincinnati and Suburban Bell Telephone Company and The Felicity Home Telephone Company (corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this commission, of the sale by The Cincinnati and Suburban Bell Telephone Company of certain of its property in the southeastern part of Clermont County, Ohio, including the local exchange property at Felicity, Ohio, to said The Felicity Home Telephone Company and the sale, by said The Felicity Home Telephone Company, of certain of its properties and plant in said portion of Clermont County to said The Cincinnati and Suburban Bell Telephone Company.

And the commission having heretofore found and ascertained the valuation of the several classes and kinds of property of the applicants, used and useful for the convenience of the public in the furnishing of telephonic service in and about the village of Felicity, and of said property as a whole, upon which the rates, tolls, charges and rentals for a merged service are to be based, and notice of such valuation having been duly given to said applicants and the Mayor of Felicity, Ohio, by registered letter, as provided by law, and it appearing that the consolidation of applicants' proportion in and about the village of Felicity will promote the public convenience, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, the commission is satisfied that its consent and authority for such sales and purchases of property should be granted.

The commission further finds and determines the following rates, rentals, tolls and charges to be just and reasonable for the furnishing of a unified telephonic service in and about the village of Felicity, to-wit:

Toll service throughout Clermont County, from the Felicity exchange, 10 cents per message.

Individual line, within the corporate limits of Felicity, \$1.00 per month.

Rural Multi-Party line outside of the corporate limits and within the Felicity Central Office District, \$1.00 per month.

Extension telephones, 50 cents per month.

Extension bells, 15 cents per month.

Joint-User service, Business, 50 cents per month.

Joint-User service, Residence, 25 cents per month.

Mileage charges for individual lines outside of the corporate limits of Felicity, for each one-half mile or fraction thereof, added to the above rate for individual lines, 50 cents per month.

Rates include the use of the lines of the following companies: Higginsport Home Telephone Company and Hamersville Telephone Company.

Ordered, That said The Cincinnati and Suburban Bell Telephone Company be, and hereby it is authorized to sell and convey to said The Felicity Home Telephone Company certain of its property in the southeastern portion of Clermont County, Ohio, including the local exchange property in the village of Felicity, Ohio, as more particularly described in the general exhibits submitted in this proceeding; and said The Felicity Home Telephone Company hereby is authorized to purchase and acquire said property and to consolidate the same with its present facilities and system. It is further

Ordered, That said The Felicity Home Telephone Company be, and hereby it is authorized to sell and convey to said The Cincinnati and Suburban Bell Telephone Company certain of its property in Clermont County, Ohio, as more particularly described in the several exhibits submitted in this proceeding; and said The Cincinnati and Suburban Bell Telephone Company hereby is authorized to purchase and acquire said property and to consolidate the same with its present facilities and system. It is further

Ordered, That upon the acquisition of said property, said The Felicity Home Telephone Company and said The Cincinnati and Suburban Telephone Company may establish, maintain, impose, charge and collect for furnishing telephonic service in the territory now served by means of said property, rates not in excess of the rates, tolls, charges and rentals hereinbefore found and determined to be just and reasonable. It is further

Ordered, That schedules be filed accordingly. It is further

Ordered, That the finding of the commission in relation to the service of the applicants shall not be binding upon this commission in any future proceeding involving that subject.

No. 1768—In the Matter of the Petition of The Athens County Home Telephone Company and The Citizens Telephone Company for Such Consent and Approval of the Commission as May Be Necessary to Permit Them to Enter Into Contracts With Each Other That Will Enable Them to Interchange Toll Business. Prayer Granted.

(Dated October 9, 1919)

This day this matter came on for final consideration upon the joint application of The Athens County Home Telephone Company, (a corporation duly organized and existing under the laws of Ohio with its principal office at Athens, Ohio), and The Citizens Telephone Company, (a corporation duly organized and existing under the laws of Ohio with its principal office at Tupper's Plains, Ohio), asking the consent to and approval, by this commission, of the making and entering into, by said parties, of a certain contract providing, among other things, for the establishment of a physical connection between their respective systems and the interchange of toll business thereby:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in the petition and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds, from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted thereby, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the establishment of a physical connection between applicants' systems and the interchange of toll business thereby, should be granted. It is, therefore,

Ordered, That said The Athens County Home Telephone Company and said The Citizens Telephone Company (of Tupper's Plains, Ohio), be, and hereby they are authorized to establish a physical connection between their respective systems and to interchange toll service, as provided by law. It is further

Ordered, That the applicants file with this commission schedules of rates and charges, rules and regulations governing such interchanged toll business. It is further

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this commission in any future proceeding involving said matters.

J

No. 1744—In the Matter of the Petition of The Champaign County Telephone Company and The Urbana Telephone Company for Such Consent and Approval as May Be Necessary to Permit Them to Respectively Purchase and Sell Certain Telephone Property. Prayer Granted.

(Dated October 10, 1919)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of The Champaign County Telephone Company and The Urbana Telephone Company, (corporations duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this commission, of the sale and conveyance, by said The Urbana Telephone Company, of all its property and assets to, and the purchase and acquisition thereof by said The Champaign County Telephone Company:

Upon consideration whereof, and being fully advised in the premises, the commission finds that the convenience of the public will be promoted by such purchase and sale of telephone property and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for such purchase and sale of said property should be granted. It is, therefore,

Ordered, That said The Urbana Telephone Company be, and hereby it is authorized to sell and convey to The Champaign County Telephone Company all of its property and assets, as more particularly described in a detailed inventory appended to the application herein as Exhibit A, which exhibit hereby is made a part of this order by reference; and said The Champaign County Telephone Company hereby is authorized to purchase and acquire said property. It is further

Ordered, That forthwith upon the exercise of the authority

herein granted, the applicants file with this commission schedules providing for their respective withdrawal from the inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any diminution of service or increase of rates within the territory now served by means of said property, nor shall the finding hereinbefore set forth as to service be binding upon this commission in any future proceeding involving said matter.

ATTORNEY GENERAL

The County Surveyor is Entitled to the Expenses Provided for by Section 2786 G. C., and the Amendment to Section 7181 G. C. 107 O. L. p. 110, Does not Repeal Said Section. The Tax Map Assistant to the County Surveyor Appointed Under Section 5552 General Code, is not An Assistant or a Deputy Within the Meaning of That Portion of Section 2786 G. C. Which Entitles an Assistant or Deputy to Expenses Incurred in the Performance of His Duties. An Assistant or Deputy County Surveyor is Entitled to Board, Lodging and Automobile Hire as a Part of the Expenses Provided for by Section 2786 G. C.

No. 690—(Opinion Dated October 11, 1919.)

Hon. Charles L. Flory, Prosecuting Attorney, Newark, Ohio.

Dear Sir: Your letter is received, submitting for opinion three questions, of which the first is as follows:

- “1. Is the county surveyor entitled to the expenses provided for by Sec. 2786, Gen. Code, in view of the last amendment of Sec. 7181, Gen. Code, found in Volume 107, page 110, Ohio Laws?”

Section 2786 G. C. reads:

“The county surveyor shall keep his office at the county seat in such room or rooms as are provided by the county commissioners, which shall be furnished, with all necessary cases and other suitable articles, at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties.”

Section 7181 G. C. (as amended, 107 O. L. 110) reads in part:

“The county surveyor shall give his entire time and attention to the duties of his office and shall receive an annual salary to be computed as follows: * * * * Such salary shall be paid monthly out of the general county fund upon the warrant of the county auditor and shall be instead of all fees, costs, per diem or other allowances, and all other perquisites of whatever kind or description which any county surveyor may col-

lect or receive. The county surveyor shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position. When the county surveyor performs service in connection with ditches or drainage works under the provisions of sections 6442 to 6822 inclusive of the General Code of Ohio, he shall charge and collect the per diem allowances or other fees therein provided for, and shall pay all such allowances and fees monthly into the county treasury to the credit of the general county fund. The county surveyor shall do likewise when he performs services under the provisions of sections 2807 to 2814 inclusive of the General Code of Ohio."

Before its amendment, the pertinent language of section 7181, which at that time designated the county surveyor as county highway superintendent, was as follows (106 O. L. 612) :

"The salary above provided for shall cover all services rendered by the county highway superintendent to the state, county and townships."

With reference to the statute in its form as last quoted, it was held by this department, among other things, in an opinion of September 20, 1915 (Opin. of Atty. Gen. for 1915, Vol. II, p. 1785) as follows: (Syll.)

"Annual salary provided by section 138 of the Cass highway bill, G. C., 7181, does not cover services rendered by county surveyor in making tax maps under provisions of sections 5551 and 5552, G. C.

* *

Salary provided for in section 138 of the Cass highway bill, G. C., 7181, does not cover services to private individuals under sections 2807 to 2814, G. C., nor does said salary cover the services of county surveyor in the location and construction of ditches where the cost of such ditches, including the engineering expense thereon, is assessed against and paid by the owners of land specially benefited.

* * "

Plainly, then, the purpose of the legislature in amending said section was to provide, in as positive terms as might aptly be employed, that the various fees which the county surveyor might receive, in addition to the salary provided by said section, should no longer be retained by him, but should be paid into the county treasury; and in order that no room should remain for doubt as to that purpose, the legislature at the same time enacted the following (107 O. L. 142) :

"Sec. 6956-4. The words 'county highway superintendent' found in any section of the General Code of Ohio not

herein amended or repealed shall after the taking effect of this act be read 'county surveyor'."

Since the legislature did not, when amending section 7181, expressly amend or repeal section 2786, and has not since expressly changed the latter section in any way, we are left to a consideration of the question whether said amendment of section 7181 has the effect of an implied amendment or repeal of section 2786, in so far as this last named section relates to expenses of the county surveyor.

The Ohio rule as to repeals by implication is thus stated by the supreme court in *Railway Co. vs. Pace*, 68 O. S. 200, at p. 205 of the opinion:

"But repeals by implication are not favored, and this court has said in the case of *Dodge v. Gridley*, 10 Ohio 178: 'Where two affirmative statutes exist, one is not to be construed to repeal the other by implication, unless they can be reconciled by no mode of interpretation.' "

It is felt that as to the two statutes now under discussion there is no such inconsistency in their terms as within the rule just stated indicates an intention to repeal section 2786 in so far as relating to expenses of the surveyor. However, that point need not be discussed in detail, because we have a much broader basis of interpretation on which the statutes are readily reconciled. It will be noted that the amendment of section 7181 was enacted as part of the so-called White-Mulcahy highway act. In that same act there were important amendments to the two sections immediately following section 2786, which said two sections relate respectively to the fixing of an annual allowance for the conduct of the surveyors office, and to the appointment, compensation, etc., of deputy surveyors. There was also an amendment in the same act to section 2784 in the matter of surveyor's bond, as well as amendments to certain related sections immediately following section 7181.

In view of the fact that these substantial changes were being made as to the duties and powers of the surveyor, and that the legislature was dealing in a comprehensive way with the office of county surveyor, it is certainly to be presumed that had the legislature intended any change in related section 2786, it would have so indicated by express action. In other words, the fact that the legislature, when dealing with the subject, amended statutes closely related to section 2786, and did not amend that section, furnishes ample circumstantial evidence of an affirmative intent to allow said

section to stand in full force and effect.

Your second question is:

"2. Is the tax map assistant to the county surveyor, appointed under Sec. 5552, Gen. Code, an 'assistant' or 'deputy' within the meaning of that portion of Sec. 2786, Gen. Code, which entitles an assistant or deputy to expenses incurred in the performance of his duties?"

This question of course proceeds upon the assumption that said Section 2786 has not been repealed by implication in so far as it relates to the expenses of assistants and deputies to the county surveyor. That such assumption is correct, is clearly shown by the fact that in amending section 7181, as noted in the discussion of your first inquiry, the legislature made no mention of assistants and deputies, so that upon no basis could it be claimed that there is an implied repeal of section 2786 in the matter of expenses of deputies and assistants.

Section 5551 G. C. authorizes the county commissioners to appoint the county surveyor as tax map draughtsman, and then goes on to enumerate the duties of the surveyor in that connection, the surveyor being empowered to employ necessary assistants, not exceeding four. Then follows the section referred to by you, reading as follows:

"Sec. 5552. The board of county commissioners shall fix the salary of the draughtsman at not to exceed two thousand dollars per year. They shall likewise fix the number of assistants not to exceed four, and fix the salary of such assistants at not to exceed fifteen hundred dollars per year. The salaries of the draughtsman and assistants shall be paid out of the county treasury in the manner as the salary of other county officers are paid."

Of course this section must be read in conjunction with above quoted section 7181, and as so read the two sections were the subject of an opinion of this department of date June 7, 1917 (Opin. of Atty. Gen., Vol. I, p. 949, 1917), wherein it was held:

"Under the new Highway Act, which becomes effective on June 25, 1917, the assistants to the county Surveyor as tax map draftsmen must be furnished and paid under the provisions of Sections 5551 and 5552 G. C., the provisions of the new act having no effect upon this matter."

Supplementary to this last mentioned opinion, there appears an opinion of this department dated July 24, 1917 (Opin. of Atty. Gen. for 1917, Vol. II, p. 1264), wherein it was held, among other things:

"When the county surveyor acts as tax map draftsman, his deputies are provided and paid under the provisions of sections 5551 and 5552 G. C."

In a memorandum accompanying your inquiries, you indicate a belief that the views of this department, as expressed in said two opinions, lead to the conclusion that the assistants employed in accordance with sections 5551 and 5552 are assistants within the meaning of section 2786 G. C., allowing payment of the expenses of assistants to the county surveyor. However, it is believed that your impression is erroneous. It has already been seen that in the opinion of July 24, 1917 it was held that deputies were paid in accordance with the provisions of sections 5551 and 5552 G. C. It was also said in the course of the same opinion: (p. 1265)

"The duties he performs as tax map draftsman are not performed as county surveyor, but as county tax map draftsman; that is, virtually, two positions are held by the same person, namely, county surveyor and county tax map draftsman.

In so far as his deputies are concerned for this position, the provisions of sections 5551 and 5552 G. C. will control. If he needs a deputy in the performance of these duties, the county commissioners may fix the number and pay of the same, which is paid out of the county treasury, as other county officers are paid."

While the distinction thus made as between the duties of the county surveyor and the tax map draughtsman seems somewhat artificial, in view of the mandate of section 7181, that the "county surveyor shall be the county tax map draughtsman," yet it must be borne in mind that the legislature, when so amending section 7181 G. C., saw fit to leave untouched sections 5551 and 5552, although, as has been above noted, the legislature in connection with said amendment expressly abolished the distinction between "county surveyor" and "county highway superintendent"; and it must also be borne in mind that in the earlier forms of sections 5551 and 5552 no reference was made to the county surveyor, but to the employment of "an expert draughtsman" (See 89 O. L. 220; 94 O. L. 558). Hence, there is ample reason for the distinction in question, if resort thereto be necessary in order to give effect to the several sections involved; for it is well to keep in mind the principle above referred to, that repeals by implication are not favored and are not accomplished, if the statutes can be fairly reconciled.

It follows from the above that in as much as the assistants provided for by sections 5551 and 5552 are assistants to the county surveyor in his capacity as tax map draughtsman, such assistants

do not come within the terms of the last sentence of section 2786, reading:

"The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties."

Your third question is:

"3. Is an assistant or deputy entitled to board, lodging and automobile hire as a part of the expenses provided for by Sec. 2786, Gen. Code?"

This question was substantially answered as to board and lodging, in an opinion of this department of date January 16, 1912 (Ann. Rep. of Atty. Gen. for 1912, Vol. I, p. 145). The statutory language construed in that opinion was "necessary actual expenses," and the conclusion reached with respect to such language was that it permitted the inclusion of such items as meals and lodging. It is believed that the same conclusion applies to the words "reasonable and necessary expenses," now appearing in section 2786.

The matter of hiring an automobile by the county surveyor was passed upon in an opinion of this department of date August 24, 1915 (Opin. of Atty. Gen. for 1915, Vol. II, p. 1592), wherein it was held that by virtue of section 2786 the surveyor might hire an automobile when necessary in the discharge of his official duties. Of course the same is true of deputies and assistants, since section 2786 makes no distinction between them and the surveyor in the matter of expenses.

Your attention is called to section 7200 G. C. (107 O. L. 115), which provides in part:

"The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business."

This language of course does not have a direct bearing on your inquiry, because it relates to a rather comprehensive plan for an established "transportation system" to be provided on the initiative and within the discretion of the commissioners. However, it is thought proper to make mention of the section as a matter of information in connection with your third inquiry.

In conformity with the foregoing, your first and third questions are answered in the affirmative, and your second question in the negative.

The Laws Relating to the Removal From Office Prior to the Enactment of and Exclusive of Sections 10-1 et seq., G. C. Does Not Define Causes or Fix a Procedure For the Removal From Office Which Applies Uniformly to All Offices. Such Causes For and Procedure of Removal Are Found in the Various Acts Creating and Defining the Duties of Each Office.—By the Enactment of Sections 10-1 et seq., G. C. in Addition to the Causes and Procedure Fixed and Provided By Earlier Statutes, Causes For the Removal From Office Generally Are Fixed and Procedure Therefor is Provided. The Bureau of Inspection and Supervision of Public Offices Has No Official Power or Faculty as Such to Exercise in the Matter of Removal From Office. However, Where the Statute as to Any Given Office Does Not Require That the Complainant Possess Residential, Tax Paying or Other Special Qualifications, the Head of Such Bureaus or Any Member Thereof Could Initiate and Prosecute a Complaint for Official Misconduct in the Manner Provided in the Statutes Relating to Such Particular Office.

No. 650—(Opinion Dated September 24, 1919.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of your recent request for the opinion of this department as follows:

“We are respectfully calling your attention to Section 283 of the General Code, together with Section 286 G. C., in part as follows:

‘Sec. 286. * * * If a report sets forth any malfeasance, misfeasance or gross neglect of duty on the part of any officer or employe for which a criminal penalty is provided by law, a certified copy thereof shall be filed with the prosecuting attorney of the county in which the offense is committed, and such prosecuting attorney shall, within ninety days after receipt thereof, institute criminal proceedings against such officer or employe. * * *’

Statement of Facts. Much trouble is occasioned this department, owing to the fact that quite occasionally records necessary are not kept in any shape or form and in many cases where the conduct of the office from the standpoint of properly accounting for collections is most questionable, it is impossible to make a consistent audit as there is no foundation, the records not being there.

Question 1. In view of the provisions to which we have

called your attention, as well as the constitution and general laws of the state, in whom may the power of removal from office be vested?

Question 2. Has this department any power other than report in the matter?

We are respectfully requesting your written opinion in answer to the above."

It is noted that your inquiries do not relate to removals from any specific offices, but rather to the removal from office generally.

Section 38, Article 2 (1912) of the constitution of Ohio, and Sections 10-1 et seq. and 283 G. C., are of general application.

Section 38 in part is as follows:

"Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, * * for any misconduct involving moral purpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution."

Section 283 G. C. provides that all public officers or employes who neglect to keep the accounts of his office in the form prescribed by the Bureau of Inspection and Supervision of Public Offices, or to make the reports required by such Bureau, "shall be removed from office on hearing before the proper authority."

Until the enactment of Sections 10-1 et seq. (infra) in 1913, (103 O. L., 851), there was no statute which defined the causes or fixed the procedure for removal from office which applied uniformly to all offices. Specific causes, however, and methods of removal from office, are found in the various earlier acts creating and defining the duties of each office and therefore no general rule is established by them.

For example, Sections 2913, 3036, 3049, 2579, 2790 and 2713 G. C. relate to the removal of certain county officers.

In Section 2913 G. C. the power of removal of the prosecuting attorney is lodged with the common pleas court on complaint of a tax payer.

In Section 3036 G. C. provision is made for the removal of the clerk, sheriff or prosecuting attorney who neglects to comply with the four preceding sections "at the discretion of the court," meaning the common pleas court. In this section no procedure is outlined.

In Section 3049 G. C. provision is made that certain county officers failing to make certain reports upon conviction, shall be "ad-

judged" guilty of misconduct in office, and be "immediately removed therefrom."

Without providing the procedure for such removal, nor specifically designating who shall exercise the power of removal, Section 2790 provides:

"Any person may bring civil action in the common pleas court for removal of the surveyor."

Section 2713 G. C. empowers the county commissioners to remove the county treasurer for embezzlement "upon examination of the county treasury."

In reference to municipal officers, there are likewise special provisions for the removal of specific officers. Under Section 4268 G. C. the mayor may be removed by the governor on complaint "on file in his office." Who may make the complaint is not specified in this section. Department heads may be removed under Section 4263 by council on complaint of the mayor.

A more general provision as to municipal officers is found in Section 4670 G. C., which places the power of removal for certain causes in the probate judge. The complaint under this section must be filed and sworn to by the electors of the municipal corporation.

However, by the adoption of Section 38 (*supra*) in 1912, and the enactment of Sections 10-1 et seq., a general rule for the removal of public officers was provided.

Section 10-1 defines misconduct in office and provides for the removal therefrom of "any person holding an office in this state, or in any municipality, county or any subdivision thereof."

Section 10-2 relates to the procedure for removal and requires that when the complaint is against an officer other than a state officer, the complaint shall "be signed in their own hand writing by at least twenty per cent. of the qualified electors within the designated limits for which said officer was elected," and when the complaint is against a state officer, "it shall be signed in their own hand writing by at least six per cent. of the qualified electors of the state."

Under this section complaints against state officers shall be filed with the governor or court of appeals of the district where the state officer resides, which officials have the power of removal. Complaints against officers other than state officers may be filed with the judge of the court of common pleas of the county wherein the officer against whom the complaint is filed resides, except that

a complaint against a common pleas judge may be filed in the court of appeals of his district.

For the purposes of this opinion, it is not necessary to cite or quote further provisions of these sections, but it is sufficient to state that the power of removal is vested in the governor and courts, as above indicated, and that the procedure for hearing of the complaints is provided in this act, being Section 10-1 to Section 10-4, inclusive.

It is to be noted, however, that this act is cumulative to "other methods of removal now authorized by law," as provided in Section 10-1.

Consideration of these various sections result in this answer to your first question:

1. The laws relating to removal from office prior to the enactment of and exclusive of Section 10-1 et seq. G. C., do not define causes or fix the procedure for removal from office which applies uniformly to all offices. Such causes for and procedure of removal are found in the various acts creating and defining the duties of each office.

2. By the enactment of Section 10-1 et seq. G. C., in addition to the causes and procedure fixed and provided by earlier statutes, causes for the removal from office generally are fixed and procedure therefor is provided.

The power of removal of state officers is vested in the governor of the state and in the court of appeals of the district where the state officer resides. The power of removal of the officers other than state officers, excepting upon complaint against a judge of the common pleas court, is vested in the judge of the court of common pleas of the county in which the officer against whom the complaint is filed resides. The power of removal of a common pleas judge from office is vested in the court of appeals of the district in which such judge resides.

Your second question is, has your department "any power other than report in the matter."

In addition to those sections quoted in the discussion of your first question, Sections 283 and 286 G. C. are pertinent. Section 286, construed in connection with other sections of the act creating the bureau of inspection and supervision of public offices, clearly shows its auditing and supervising function. After the creation and organization of the department, provision is made for inspection and supervision, the making of findings and the filing and

effect of such reported findings. Authority is given by this section to the law officers of the various subdivisions to enforce the findings of the bureau.

Section 286 G. C. in part provides:

"If a report sets forth any * * * misfeasance or gross neglect of duty * * * for which a criminal penalty is provided by law,"

a copy thereof shall be filed with the prosecuting attorney, who is charged with the duty of instituting criminal proceedings.

Consideration of the purpose of the act creating the bureau and defining its powers and duties, together with the further fact that no authority is given to it, as such, to prefer or prosecute any charges for official misconduct, results in this department's conclusion that the bureau has no official power or functions, as such, to exercise in the matter of removal from office. It may be added, however, that with reference to initiating charges of misconduct, where the statute as to any given office does not require that the complainant possess residential, tax-paying or other special qualifications, the head of your bureau or any member thereof could initiate and prosecute a complaint for official misconduct in the manner provided in the statutes relating to each particular office.

SUPREME COURT

The Village of Port Clinton et al. vs. Fall.

Appropriation of Property—Elimination of Railroad Grade Crossing—Compensation to Land Owner—Light, Air and Unobstructed View—Incorporeal Hereditaments are “Property,” When—Section 8888, General Code—Abutting Lands Defined—Vacation of Street and Appropriation of Land and Vacated Street.

1. The right to the circulation of air, the passage of light, and an unobstructed view over a street, together with the relative harmony of said street with the abutting lots, is an incorporeal hereditament attaching to such abutting lots, and is property within the meaning of Section 8888, General Code.

2. Where the vacation of a street, the appropriation of land for a street adjacent thereto (and between the theretofore abutting lands and the vacated street) and the appropriation of such vacated street for the construction of a railroad elevated above the grade of the street, are contemporaneous and simultaneous transactions, said lands abut upon the vacated street for the purpose of fixing compensation and damages for the appropriation of the incorporeal hereditament of the abutting landholder therein.

No. 15998—(Decided February 11, 1919)

Error to the Court of Appeals of Ottawa County

The defendant in error, Josie Fall, at the time of the institution of this action in the probate court of Ottawa County, Ohio, was the owner of the east half of lots Nos. 13, 14, 15 and 16, of Block No. 7, in the village of Port Clinton in said county, together with a certain dwelling house and other buildings located thereon—the lots being adjacent to each other and said lot 16 abutting upon Second street, a 60-foot public street of said village; and the plaintiff in error The New York Central Railroad was the owner and operator of a railroad—operated under the name of The Lake Shore & Michigan Southern Railway Company, through said village, at a point some distance from said lots and said Second street.

For reasons satisfactory to the railroad company and to the village of Port Clinton, said railroad company had theretofore decided to relocate said railroad over that portion of Second street upon which said lot No. 16 abutted, and to eliminate the grade crossing. An ordinance was duly passed to accomplish that purpose and also to vacate said portion of Second street, the ordinance providing for the location of a new 50-foot street adjacent to Second street, across the property of the defendant in error, the vacation, however, not to take effect until the location of the new 50-

foot street was accomplished; the ordinance further providing the railway company should bear the entire expense of the changes and improvements required to be made, "including changes of streets and the grade thereof, the damages to abutting or other property on account of such changes or of changes in the location or grade of its said railroad," and also granting a franchise to the railroad company to construct and to operate a four-track railroad, with necessary side tracks, through said village, over a line including that portion of Second street hereinbefore referred to, said track to be constructed at an elevation of some 13 feet above the grade of Second street.

The terms of this ordinance were duly accepted by the railroad company.

This action, pursuant to said ordinance, was brought by the railroad company, in the name, however, of the village of Port Clinton, for the purpose of assessing and having determined the amount of compensation due the defendant in error for and on account of land taken for the new street.

Thereupon, and before a trial of the cause, a contract was entered into between the defendant in error and the plaintiffs in error herein, whereby it was agreed by and between the parties that the probate court might hear and determine in said appropriation case or cases the following questions and matters:

"1. Compensation and damages due to the land owners arising out of said appropriation by said village.

"2. Damages that could properly be awarded said land owners in a proceeding under Section 8885 of the General Code; and it shall be deemed that such a proceeding has been commenced with proper pleadings and has been consolidated with said proceeding to assess compensation and damages.

"3. The right of said land owners to recover from said railroad compensation for property or property rights necessary to be acquired by it to make said improvement, it being understood that the railroad company does not admit but denies the existence of such right in said land owners; and if it be determined that such rights do exist, then it shall be deemed that the railroad company has begun a proceeding to appropriate the same as provided in Section 8888 of the general code and that the same has been consolidated with said proceeding to assess compensation and damages, and all questions of compensation or damages arising in a proceeding under Section 8888 of the general code will then be

presented and determined in such proceeding to assess compensation and damages.

"4. Any of said parties shall have the right to submit to the jury, interrogatories requiring the jury specifically to find particular questions of fact to be stated in writing and said jury shall return a written finding thereof. Said interrogatories shall be pertinent to the issues.

"This agreement shall not be construed as a waiver of the right of said parties to contest the validity of said appropriation proceedings or of any of the said claims for damages, nor shall it affect the right of either party hereto, to object to evidence deemed incompetent, nor shall it affect the right to prosecute or require the prosecution of error as in other cases.

"Said jury shall be impaneled in the usual manner in appropriation proceedings.

"All preliminary questions arising through the passage of the resolutions, service of notice and passage of ordinances for the appropriation aforesaid, are, by each and all of the land owners, hereby waived upon the filing of this agreement. The court may enter a proper order finding therefor, and that notice has been properly served upon all the parties herein, and setting a time for the assessment of the compensation and damages aforesaid by a jury and ordering said jury to be drawn as provided by law."

A jury was impaneled, evidence adduced upon the three propositions contemplated in paragraphs 1, 2 and 3 of the contract, and the following verdict was returned:

"We, the jury empaneled and sworn in this proceeding, do find and assess compensation and damages to be paid by the village of Port Clinton, Ohio, or the New York Central Railroad Company, or both, by reason of the appropriation of said property to the use of said village or said railroad company, or both, in the several cases submitted to us as follows:

"1. To Josie Fall, the owner of the property described in the petition as her property, we assess as compensation for the land taken—one thousand (\$1000.00) dollars.

"2. As damages to the residue of property by reason of land taken for street purposes—one thousand (\$1000.00) dollars.

"3. As damages to the residue of property by reason of railroad improvement in Second street—two thousand (\$2000.00 dollars."

Messrs. Graves, Stahl & Duff and Mr. C. L. Handy, for plaintiffs in error.

Messrs. True & Crawford, for defendant in error.

Robinson, J. No complaint is made here as to items 1 and 2 of the verdict and it is conceded that if the defendant in error is entitled to recover anything under item 3 the amount fixed by the jury is not so grossly excessive as to require reversal upon that ground; but it is claimed by the plaintiffs in error that by reason of the appropriation of the 50-foot strip of land off of the land of the defendant in error, adjacent to Second street, her land thereby ceased to abut upon said Second street, and that therefore she is not entitled to compensation under Section 8888, general code; and that if she is entitled to any additional compensation it is under the "near to" provision of Section 8765, General Code, which right to compensation, if any, has not yet accrued, said railroad being not yet in operation.

Section 8888, General Code, reads as follows:

"Sec. 8888. The land or property required to make alterations in the street, road, alley or other way or any right, title or interest in a public street, alley or other way, required for the erection of piers or supports in any municipality, necessitated by the proposed improvement, shall be purchased or appropriated by the municipality or company after the manner provided by law for the appropriation of private property for public use. The land or property required to make any alteration in a railroad or railroads or any right, title or interest in a public street, road, alley or way required to permit the erection of piers or supports in any municipality, and structure necessitated by the proposed improvements, shall be purchased or appropriated by the railroad company or companies after the manner provided for the appropriation of private property by such corporation. But the municipality shall not appropriate land held or owned by a railroad company and necessary for the use of the company in maintaining and operating this road."

The confusion as to the respective rights of the parties hereto grows out of the provision for the vacation of said Second street and the provision for the opening of the new 50-foot street adjacent thereto in the same ordinance, and from the provision that said vacation shall not take effect until the opening of the new street is accomplished, and by the combination of the appropriation proceedings of the village of Port Clinton against Josie Fall and the appropriation proceedings of The New York Central Railroad Company

against Josie Fall into one and the same action, thereby making the vacation of Second street, the establishment of the new 50-foot street, and the appropriation of Second street, contemporaneous, it being apparent that had the vacation of Second street, the appropriation of Second street by the railroad company for railroad purposes and the appropriation of the land of Josie Fall for the purpose of the new 50-foot street followed each other in that sequence, Josie Fall would have been entitled to compensation from the railroad company for land appropriated; for clearly a portion of said street, upon its vacation, would have passed to her as the abutting lot owner. And, again, had the appropriation of Second street by said company for the purpose of constructing a railroad thereon above the grade of said street antedated the appropriation by the village of Port Clinton of the land of the defendant in error for street purposes, defendant in error would have been entitled to recover under Section 8888, General Code, for her property rights in said street other than land. *Quinby vs. City of Cleveland*, 15 O. F. D., 583, 9 O. L. R., 313; *Scioto Valley Ry. Co. vs. Lawrence*, 38 Ohio St., 41; *Street Railway Co. vs. Village of Cumminsville et al.*, 14 Ohio St., 523; *Crawford vs. The Village of Delaware*, 7 Ohio St., 460, and *Field et al. vs. Barling et al.*, 149 Ill., 556.

But since by the terms of the ordinance the vacation of Second street was not to take effect until the appropriation of the 50-foot new street, and by the terms of the agreement the two appropriation proceedings were tried in the same cause at one and the same time, to one and the same jury, and the awards made in one and the same verdict, the three transactions became contemporaneous.

It is urged, in effect, that, since the three events can be arranged in a sequence that would defeat the right of the defendant in error to recover, and that, since her lands no longer abut upon original Second street, she ought not to recover it; for, had the new 50-foot street been established first, Second street vacated next, and the vacated Second street appropriated for railroad purposes last, the result would have been, since the 50-foot street is adjacent to Second street, that the lands of the defendant in error would no longer abut upon the vacated street appropriated by the railroad company, and the only recourse of the defendant in error would be under Section 8765, General Code, in an action for damages, which right of action had not yet accrued and was not within the jurisdiction of the probate court.

But what right has a court to arrange in sequence events that are contemporaneous, and therefore have no sequence? The plaintiffs in error initiated these proceedings, and by agreement and ordinance provided for the simultaneous operation of the three events, and, up to the moment of the acceptance by the plaintiffs in error of the assessment of compensation and damages by the jury, Second street was not vacated, the new 50-foot street was not established, and the property rights of the defendant in error in Second street were not appropriated, and the lands of the defendant in error up to the moment of said acceptance therefore did abut upon Second street and she therefore did have property rights therein other than the land; such as the right to the free circulation of air, the undiminished radiation of light, an unobstructed view, and a surroundnig relatively harmonious.

The appropriation by said railroad company of Second street for the purpose of building thereon an embankment many feet high did interfere with the property rights of the defendant in error in said street, in the interference with the circulation of air, in the partial exclusion of light, the obstruction of her view, and in rendering said street, by reason of its elevation, relatively out of harmony with her lands adjacent thereto. And since her damage in that respect is in no way diminished by the appropriation of the 50-foot new street off of the premises, and since the legislature in recognition of the common law had given her, so long as she was an abutting property owner, the right under Section 8888, General Code, to recover therefor, and since that right up to the time of the acceptance of said award had not been extinguished by the location of the new 50-foot street, causing her lands to no longer abut upon original Second street, we seen no reason why a court should step in and take from her that which by statute and by the common law was hers, simply because she might have been deprived of her rights therein without compensation, by an arranged sequence of events..

The judgment of the court of appeals is therefore affirmed.

Judgment affirmed.

Nichols, C. J., Jones, Matthias, Johnson, Donahue and Wanamaker, JJ., concur.

SECRETARY OF STATE

NEW CORPORATIONS

Lewis Steel Products Co., Toledo, \$5,000. Alonzo C. Suthley, Stanley J. Hiett, M. L. Spooner, A. H. Clas, W. M. Albaugh.

Dealers' Candy Co., Youngstown, \$100,000. Frank A. Lambert, Fred S. Parsons, Joseph Maurer, C. S. Dawson, E. W. Burrell.

Columbus Machine and Engineering Co., Columbus, \$100,000. Charles M. Wagner, Forrest L. Keiser, Charles G. Schenck, Jr., R. F. Van Horn, E. M. Baldrige.

Patterson & Moore Co., Cleveland, \$10,000. Wm. H. Patterson, John Moore, W. J. Hawley, F. M. Seivord, S. R. Goldberg.

Pulaski Co., Youngstown, \$25,000. P. K. Stevenson, J. F. Myers, E. M. Schenck, Elias Jenkins, James Kennedy.

More Miles Manifold Co., Warren, \$25,000. Edgar Green, A. B. Powrie, Fred H. Myers, Howard L. Griffith, George M. Boone, E. C. Wolcott.

Ribbon Renewer Co., Cleveland, \$20,000. L. R. Canfield, R. S. Yount, W. A. McIlrath, C. N. Haake, Edward W. Telzrow.

Greater Cleveland Securities & Investment Co., Cleveland, \$20,000. I. E. Brick, E. M. Williams, I. E. Guentzler, C. Brueggemyer, C. Flanagan.

Stryker Urban Power & Light Co., Stryker, \$25,000. Elmer S. Johnston, William S. Ufer, Robert Johnson, Charles H. Clark, Daniel Augustine, Charles Pugeot.

Summit Business Exchange Co., Akron, \$10,000. Attilie Patrone, Benjamin C. Kelly, Nolda B. Kelly, F. C. Simmons, Lillie B. Simmons.

Lapeer Realty Co., Toledo, \$15,000. M. Siglow, T. Wooster, Sigmond Sanger, A. J. Kranz, Otto H. Spangler.

Bellaire Land and Development Co., Bellaire, \$50,000. Harry A. Neff, David Walker, R. D. Nicholson, Charles H. Dankworth, J. F. Mellott, J. M. DuBois.

Rubber City Tool and Templet Co., Akron, \$10,000. Frank L. Johnson, Charles S. Fraleigh, Otto H. Gomell, Wilmer D. Ernsberger, Wendell L. Willkie.

National Securities Co., Columbus, \$250,000. William N. Ferguson, Jos. W. Hohl, Michael F. Higgy, Herbert C. Sherman, S. C. Barrett.

Children's Play-Time Equipment Co., Sylvania, \$15,000. David Anderson, David Anderson, Jr., Harold Anderson, A. B. Gabriel, Judd B. Cox.

George H. Yeagley Co., Steubenville, \$100,000. George H. Yeagley, H. G. McFarren, Blaire E. Graham, Leroy H. Ault, Harriet Yeagley.

Dorr Run Oil and Gas Co., Nelsonville, \$27,000. George June, Charles F. Myers, Corwin Andress, C. G. Dew, A. B. Wells.

Shawnee Realty Co., Zanesville, \$30,000. Joseph Shaw, H. C. VanVoorhis, C. H. Denny, Stephen Mills, E. O. Dennis.

Mogadore Land Co., Mogadore, \$40,000. J. M. Alderfer, Fred J. Hale, D. A. Grubb, George T. Whitmore, Francis Seiberling.

Steelduct Co., Youngstown, \$100,000. Charles Follett, Walker H. Nye, Orville Smith, L. C. Wykoff, W. B. Stewart.

John J. Houska Baking Co., Cleveland, \$10,000. Edward V. Houska, Josephine M. Houska, J. Houska, Harry C. Burnett, John E. Clarke.

World Beater Churn Co., Minerva, \$15,000. Lewis W. Huberty, W. G. Kryder, A. Thomas, W. R. Kurtz, J. B. Temple.

Dunham Service Corporation Co., Columbus, \$10,000. L. W. Dunham, Georgia H. Dunham, Deo R. Dunham, Mary M. Dunham, Daphene Dunham.

McDonough-Goldberg Cap Co., Columbus, \$10,000. Lawrence McDonough, Joe Goldberg, A. H. Journey, H. Goldberg, M. J. Walsh.

West Millgrove Gas and Oil Co., West Millgrove, \$10,000. W. S. Bennett, L. J. Chilcote, B. E. Whitman, G. M. Ketcham, Ross Manecke, Herbert DeWitt, C. A. Rosendale, George W. Stearns, J. A. Yates.

Manning Realty Co., Cleveland, \$10,000. Isador Grossman, H. Sharpe, H. B. Howells, N. M. Doehring, Harry C. Gahn.

Oliver Co., Akron, \$50,000. H. M. Oliver, John M. Sullivan, N. O. Math-er, R. N. Nesbitt, W. B. McIntosh.

Huffman Recording Pump Co., Dayton; \$210,000. Frank T. Huffman, John M. Huffman, William T. Hatmaker, George L. Baker, Edward E. Burkhardt.

Turbine Air Tool Co., Cleveland; \$7500. Lucy H. Klein, Lewis F. Cook, William E. Tousley, W. B. Stewart, Charles Follett.

Bush Electric Co., Cleveland; \$25,000. H. H. McKeehan, W. B. Stewart, Charles Follett, Walker Nye, Orville Smith.

L. A. Black Co., Cleveland; \$10,000. L. A. Black, D. E. Black, C. E. Black, Fred B. Fisherman, M. E. Kelly.

Centamint Mfg. Co., Cincinnati; \$15,000. Henry Reichus, Walter A. Heitkamp, Fred L. Aschenbach, Frank J. Hoenemeyer, Jos. C. Spear.

Citizen's Banking Co. of Kenmore, Ohio; \$25,000. Fred E. Smith, H. G. Haynes, H. R. Smith, W. W. Shank, R. F. Hamlin.

Ahelium Specialties Co., Elyria; 10,000. Edward M. Williams, A. C. Ryan, L. B. Fauver, B. L. Farmer, F. L. Hamel.

Carpenters' Building Co., \$100,000. Thomas H. Hamilton, Carl G. Schroeter, James M. Rundle, Albert E. Hughes, Henry C. Miller, Walter W. Davison, William Lauer.

J. W. Rapp Co., Toledo; \$25,000. Paul L. Rapp, John W. Rapp, Charles B. Wilkinson, Ernest J. Rapp, Ralph W. Dity.

Broadway Construction Co., Cleveland; \$1,000. Harry L. Deibel, E. C. Wolfe, A. J. Pejisa, L. M. Sewell, Gilbert Morgan.

Meyers Bros. Co., Akron; \$100,000. Leo Meyer, Don Hotchkiss, H. A. Sullivan, C. F. Schnee, N. M. Greenberger.

New Co-operative Oil & Gas Co., Columbus; \$50,000. R. R. Zurmehly, J. C. Callery, Joseph Callery Jr., A. B. Wesloski, S. R. Bygate, H. O. Fulkerson.

Riverside Thershing Co., Delphos; \$2500. Roy Humphreys, James I. Peltier, Charles E. Myers, Benjamin Laman, Clifford C. Long.

Ironton Monument Co., Ironton; \$25,000. H. M. Edwards, J. W. Durnell, W. E. Brammer, F. R. Henderson, Raymond P. Durnell.

Interstate Taxicab Service Co., Cincinnati; \$10,000. H. M. Wheeler, Daniel Hibberd, Thomas Stefnmetz, John H. Sharp, Abe Yeagerman.

Lewis-Moore Mfg. Co., Cleveland; \$15,000. A. C. Morse, W. S. Lewis, C. J. Frisbe, Joy Hurd, Eleanore Smith.

Tracking Trailer Co., Cleveland; \$150,000. F. P. Van Der Veer, T. M. Van DerVeer, Charles Brown, Max P. Goodman, Benjamin Feinsilber.

Mt. Vernon Window Glass Co., Mt. Vernon; \$200,000. C. Bormans, E. L. Graham, William Bennett, J. Delgouffer, E. E. Peters, Victor Servais Jr.

Mak Realty Co., Cleveland; \$5,000; J. N. Ackerman, P. J. Mulligan, John P. Kalina, E. M. Stevenson, Frances Harris.

Sales Realty Co., Cleveland; \$10,000. G. Sicherman, Henry Edel, Nathan N. Goodman, W. M. Friedenber, John H. Kaercher.

A. C. Wagner Co., Cincinnati; \$1,000. A. C. Wagner, M. S. Pickle, Mary S. Pickle, Alma B. Wagner, Martha Wagner.

Spira State Bank & Trust Co., Cleveland; \$150,000. Henry Spira, Sigmunnr Spira, Philip Spira, Harry Lorber, E. M. Greenwold.

Astel Coal Co., Cleveland; \$100,000. E. W. Astel, C. N. Fiscus, M. R. Burridge, E. L. Parkin, C. F. Taplin.

Harvest Home Building & Loan Association, Cheviot; \$500,000. P. G. Ruehlman, B. Meyerfeld, C. Weis, Fred H. Altemeier, Clifford H. Hay.

Maynard Garage Co., Columbus; \$10,000. W. C. Miller, H. A. Clarke, J. C. Nailor, C. M. Ash, Zula B. Miller.

Akron-Prospect Co., Akron, \$60,000. Frank B. Burch, C. T. Moore, Byron M. Skelton, S. D. Hadley, Orrin E. Wolf.

United Candy Co., Dayton, \$15,000. Ralph F. Tipton, Alfred J. Neal, Alonzo Taylor, Carl L. Tipton, Albert H. Scharrer.

H. N. Putnam Construction Co., Cleveland, \$52,500. H. B. Vilas, C. D. Simmons, C. B. Bayly, H. Rothenberg, M. C. Haugh.

Van Wert Fruit Co, Van Wert, \$10,000. W. G. McCoy, F. H. Simon, R. A. Amato, Lillian J. McCoy, Florence L. Simon, Rosella Amato.

Lodge Realty Co., Cleveland, \$10,000. George H. Miller, Floyd H. Browne, C. E. Kriss, Frank I. Baker, C. O. Malpas.

Parkland Heights Co., Mentor, \$50,000. William Howell, H. Melvin Roberts, R. E. Day, J. G. Quayle, L. E. Rico.

WerthMor Manufacturing Co., Barberton, \$25,000. B. W. Werth, E. F. Crites, Ray E. Morton, R. E. Wyre, A. J. Helman.

P. & K. Garage Co., Cleveland, \$25,000. John Kastner, Paul W. Pavlick, Harry E. Davis, A. M. Klein, G. C. Hafley.

Community Milling Co., Quaker City, \$25,000. W. A. Webster, W. O. Cline, Oscar Finley, D. M. Lingo, O. S. Bundy, H. H. Floyd, Harry B. Garber.

Parts Service Co., Cleveland, \$35,000. J. C. Royon, C. H. Royon, A. J. Sanders, Elliott E. Stearns, John A. Chamberlain.

Crawford Manufacturing Co., Cleveland, \$5,000. S. F. Woldman, A. L. Freeman, Mrs. A. L. Freeman, E. M. Kirchner, Albert A. Woldman.

Block Clothes Co., Cleveland, \$25,000. Henry Kestenbaum, Nathan Block, Belle Block, Rae Kestenbaum, Fenton Kestenbaum.

Huron-Sixth Realty Co., Cleveland, \$10,000. G. A. Ebeling, N. B. Madden, C. A. Quintrell, M. E. Getchell, O. E. Schultz.

Theresa-East Ninth Co., Cleveland, \$10,000. G. A. Ebeling, N. B. Madden, C. A. Quintrell, M. E. Getchell, O. E. Schultz.

Real Estate Exchange Co., Akron, \$33,000. Alonzo M. Snyder, G. W. Lippincott, Horatio Ford, M. A. Maroni, N. I. Young.

R. S. Bennett Co., Cleveland, \$52,500. R. S. Bennett, Harold H. Burton, James J. Laughlin, Jr., John M. Carr, Donald Marshman.

Jones Brothers Structural Steel Co., Ravenna, \$75,000. J. A. Jnes, B. F. Jones, G. G. Jones, Gertrude Sencil Jones, V. W. Filiatrault.

Karpate Russian Co., Akron, \$20,000. Luka Novak, Harry Michalsky, Antol Hubiak, Harry P. Zuroff, Andrew Tyrpak.

Cherry Auto Garage Co., Akron, \$25,000. Job H. McWade, Paul L. Jones, William S. Snyder, Helen L. Gault, O. G. Bentz.

Amazon Building Co., Akron, \$100,000. C. S. Kelley, C. P. Bidinger, W. H. Floto, G. Heinicke, F. Feddern.

Charles A. Federer Co., Cleveland, \$1,000. Charles A. Federer, Kate Federer, Wm. V. Whelan, Benjamin Wiener, Thomas A. Brady.

DeSure Realty Co., Akron, \$10,000. Louis Littman, Morris Lebovitz, Harry DeSure, D. Moss, Sam Rovin.

Ohio Flying School and Transport Co., Akron, \$100,000. Edwin L. Manthey, Scott W. Worley, Paul J. O'Marr, J. Paul Stanley, Harry J. Davies, John F. Aston.

Continental Pottery Co., Roseville, \$25,000. Joseph B. Foster, C. M. Foster, Willard L. Pace, Luther C. Pace, M. A. Pace.

Columbus Wire Fence Co., Columbus, \$50,000. G. W. Moore, L. F. Stricklin, Charles H. Wilkins, Ellis R. Hays, Henry I. Donnelly.

Increases

Ames Co., Cleveland, \$150,000 to \$400,000.

Saw and Knife Specialty Co., Cleveland, \$5,000 to \$25,000.

Mansfield Shale Products Co., Mansfield, \$30,000 to \$300,000.

East Lawn Realty Co., Akron, \$40,000 to \$60,000.

Toledo Pharmacal Co., Toledo, \$50,000 to \$150,000.

Akron-Prospect Co., Akron, \$60,000 to \$1,000,000.

East Akron Casting Co., Akron, \$25,000 to \$90,000.

Ironall Factories Co., Cincinnati, \$100,000 to \$150,000.

Stein Drug Co., Cleveland, \$5,000 to \$7,500.

Greenville Electric Light and Power Co., Greenville, \$180,000 to \$330,000.

Buckeye Light and Power Co., Cincinnati, \$60,000 to \$100,000.

H. G. Cress Co., Troy, \$25,000 to \$50,000.

Central Bowling Alley Co., Canton, \$10,000 to \$25,000.

C. L. Downey Co., Cincinnati, \$15,000 to \$25,000.

Western Reserve Finance Co., Elyria, \$150,000 to \$200,000.

J. W. Smith & Sons Co., Youngstown, \$68,000 to \$113,000.

R. F. Carpenter Manufacturing Co., Cleveland, \$30,000 to \$60,000.

Federal Building and Loan Co., East Liverpool, \$500,000 to \$2,000,000.

Seventy-First Euclid Co., Cleveland, \$400,000 to \$500,000.

C. A. Carson Co., Cleveland, \$10,000 to \$50,000.

Merchants' State Bank, New Philadelphia, \$60,000 to \$100,000.

Cincinnati Discount Co., Cincinnati, \$500,000 to \$550,000.

Broadway Construction Co., Cleveland, \$1,000 to \$25,000.

PUBLIC UTILITIES COMMISSION

No. 1703—John H. Coss, Complainant, vs. Richland Public Service Company, Defendant.—Order Dismissing the Complaint.

(Dated October 28, 1919.)

By the Commission:

The complainant filed his complaint alleging in substance that he is a resident of the city of Mansfield, Ohio; that on or about the _____ day of _____, 1908, he entered into an oral contract with The Mansfield Street Railway and Power Company of that city, whereby the duly authorized officer or agent of the said company agreed to install an electric fan in the office of the said complainant and furnish electric current for the operation of said fan for and in consideration of the monthly charge of \$1.50 during the time fan was in operation; and that pursuant to said verbal agreement the said The Mansfield Street Railway and Power Company did install said fan and furnish electric current to operate same at said rate agreed upon for and during all the time said fan was operated from the said year 1908 to 1919; that the defendant company successor to the property and franchises of The Mansfield Street Railway and Power Company, did during the month of May, 1919, refuse to furnish electric current to the complainant according to the terms of his oral contract entered into with the defendant's predecessor as heretofore set forth namely \$1.50 per month on a flat rate; and praying for an order of this commission directing the defendant to furnish current for the operation of said electric fan in his said office at the said flat rate provided for in his alleged contract, the basis of his action in this cause.

To the complaint of the complainant, the defendant, The Richland Public Service Company, filed its motion asking the commission to dismiss the complaint setting forth four grounds in support of same, viz:

1. That same is made without any right or authority.
2. That the Public Utilities Commission is without authority in law to grant the relief asked for.
3. That the facts stated in the complaint did not show any binding arrangement, understanding or contract enforceable against the Richland Public Service Company, nor that the complainant was entitled to the service as demanded by him.
4. The Richland Public Service Company, in accordance

with law, filed a schedule of rates for electric service with the Public Utilities Commission of Ohio, which rates were approved by The Public Utilities Commission of Ohio, and became effective December 1, 1918, and which rates are now in full force and effect, and to provide the service demanded by the complainant would be in violation of the schedule so filed and approved, and would constitute a discrimination in favor of the complainant and therefore prohibited by law.

The state in exercising its police powers by the passage of the laws governing this commission and particularly by Section 614-15 of the General Code, made it the mandatory duty of all utilities to file schedules showing all rates, joint rates, rentals, tolls, classifications and charges for service of each and every kind by it rendered or furnished, and private contracts, especially verbal contracts relating to the exercise of said power by the state, cannot supersede said power if properly exercised.

The defendant properly filed its schedule with this commission as provided by law, and this commission is without the power to compel it to furnish complainant electric current as prayed for by him, as that would be ordering the defendant to commit a discrimination, which the law itself forbids.

Judgment will enter accordingly and complaint be dismissed.

Order

This day, after full hearing and argument by counsel, this matter came on for final consideration upon the complaint herein and the motion of the defendant to dismiss the same:

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the commission does

Order, That said complaint be, and hereby it is dismissed.

3

No. 1720—In the Matter of the Joint Application of J. M. Copper-smith and Sons to Sell, and Charles H. Veach to Purchase the Venedocia Electric Light Plant.—Prayer Granted.

(Dated October 28, 1919.)

This day this matter came on for final consideration upon the joint application of J. M. Coppersmith and Sons, a partnership, which had, until April first, 1918, owned and operated the electrical utility at Venedocia, Ohio, under the trade name of the Venedocia

Electric Light Plant, and one Charles H. Veach, an individual, asking the consent to and approval, by this commission, of the sale by the said J. M. Coppersmith and Sons, and the purchase, by the said Charles H. Veach, of the aforesaid electric light plant:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public was promoted by such sale and purchase of public utility property and the public, thereby, was furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that, in so far as it has the authority so to do, it, should now formally consent to and approve the said sale and purchase of said property. It is, therefore,

Ordered, That, in so far as it has the authority so to do, this commission do now and hereby formally consent to and approve the sale, on or about April first, 1918, of the electric light plant at Venedocia, Ohio, operated under the trade name of the Venedocia Electric Light Plant, by the said J. M. Coppersmith and Sons to the said Charles H. Veach. It is further

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this commission in any future proceeding involving said matters.

✽

No. 1721—In the Matter of the Joint Application of Charles H. Veach to Sell, and of The Venedocia Electric Light Company to Purchase the Venedocia Electric Light Plant.—Prayer Granted.

(Dated October 28, 1919.)

This day this matter came on for final consideration upon the joint application of Charles H. Veach, who had, from approximately April first, 1918, to July first, 1918, owned and operated the electrical utility at Venedocia, Ohio, under the trade name of the Venedocia Electric Light Plant, and The Venedocia Electric Light Company (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this commission, of the sale by the said Charles H. Veach, and

the purchase by said The Venedocia Electric Light Company, of the aforesaid electric light plant:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public was promoted by such sale and purchase of public utility property and the public, thereby, was furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that, in so far as it has the authority so to do, it should now formally consent to and approve the said sale and purchase of said property. It is, therefore,

Ordered, That, insofar as it has the authority so to do, this Commission do now and hereby formally consent to and approve the sale, on or about July first, 1918, of the electric light plant at Venedocia, Ohio, by the said Charles H. Veach to said The Venedocia Electric Light Company. It is further.

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this Commission in any future proceeding involving said matters.

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No. 1778—In the Matter of the Application of The Venedocia Electric Light Company for Approval of the Issue and Sale of \$2,200.00 Common Capital Stock. Prayer Granted.

(Dated October 28, 1919.)

This day this matter came on for final consideration upon the application of The Venedocia Electric Light Company (a corporation duly organized and existing under and by virtue of the laws of Ohio with its office and principal place of business at Venedocia, Ohio), asking the consent to and approval, by this Commission, of the issue and sale, on or about July first, 1918, of its common capital stock of the par value of two thousand, two hundred dollars, the proceeds whereof were expended in payment of the consideration for the purchase of the electric light plant at Venedocia, Ohio, (theretofore owned and operated by one Charles H. Veach), the purchase of which, by the applicant, to the extent of the authority

of this Commission, consented to and approved by the order, this day made and entered in proceeding No. 1721:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the property so acquired by the applicant is worth not less than the sum of \$2,200.00 and that the issue of applicant's said capital stock was reasonably required and the money procured thereby necessary for the acquisition of said property to permit of the prosecution of applicant's corporate purposes, and is satisfied that, in so far as it has the authority so to do, it should now formally consent to and approve the issue and disposition of said capital stock and the expenditure of the proceeds thereof. It is, therefore,

Ordered, That, in so far as it has the authority so to do, this Commission do now and hereby formally consent to and approve the issue and sale, for the par value thereof, on or about July first, 1918, of the common capital stock of said The Venedocia Electric Light Company of the total par value of two thousand, two hundred dollars (\$2,200.00), and the expenditure of the proceeds thereof in payment of the consideration for the electric light plant at Venedocia, Ohio, (a detailed inventory of which, embodied in a report this day filed herein, hereby is made a part of this order by reference), the purchase of which, by applicant from one Charles H. Veach, on or about said first day of July, 1918, was, to the extent of the authority of this Commission, duly consented to and approved by the order this day made and entered in proceeding No. 1721.

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No. 1773—In the Matter of the Application of The Hardin-Wyandot Lighting Company for Permission to Issue \$15,200.00, Par Value, of its Seven Per Cent. Cumulative Preferred Capital Stock. Prayer Granted.

(Dated October 13, 1919.)

This day this matter came on for final consideration upon the application, as amended, of The Hardin-Wyandot Lighting Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and

authority of this Commission to issue its seven per cent. preferred capital stock of the par value of fifteen thousand, two hundred dollars in discharge of an equal amount of its indebtedness, as of August twenty-third, 1919, for and on account of the provision of additions, extensions and improvements to its plant and facilities.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds, from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that, as of August twenty-third 1919, the applicant was lawfully indebted in the sum of \$15,256.73 for and on account of the construction, completion, extension and improvement of its facilities, and that the issue and disposition of its said preferred capital stock in discharge of an equal amount of said indebtedness is reasonably required and necessary, and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Hardin-Wyandot Lighting Company be, and hereby it is authorized to issue its seven per cent. cumulative preferred capital stock of the par value of fifteen thousand, two hundred dollars (\$15,200.00). It is further

Ordered, That said preferred capital stock be issued and delivered as fully paid and at par, and non-assessable, in discharge of an equal amount of applicant's aforesaid indebtedness, as of August twenty-third, 1919, of the total sum of \$15,256.73, as more fully set forth upon the fourth page of the amended application herein, (which hereby is made a part of this order by reference), and used for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said preferred capital stock pursuant to the terms and conditions of this order.



No. 1741—In the Matter of the Application of The Wellington Telephone Company for Authority to Issue \$50,000.00 in Preferred Stock and \$20,000.00 in Common Stock. Prayer Granted.

(Dated October 30, 1919.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for

final consideration upon the application of The Wellington Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue common capital stock of the par value of twenty thousand dollars and six per cent. preferred capital stock of the par value of fifty thousand dollars, the proceeds arising from the sale thereof to be used (1) to reimburse its treasury for the sum of \$12,000.00 not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended for the construction of additions, extensions and improvements to its facilities within the period January first, 1915, to June thirtieth, 1919, inclusive, (2) to discharge demand notes, now outstanding, of the principal sum of \$8,000.00, the loans procured by which were expended for the construction of additions, extensions and improvements to facilities, (3) to discharge a bonded indebtedness of the principal sum of \$10,000.00, maturing in 1921, and (4) to purchase and install new equipment, generally estimated to cost the sum of \$40,000.00.

Upon consideration whereof, and being fully advised in the premises, the Commission finds:

1. That applicant, at this time, has no definite progress for the reconstruction of its plant and cannot furnish proper estimates for its proposed expenditures for new equipment.

2. That, within the period January first, 1915, to June thirtieth, 1919, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$12,000,000, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness.

3. That the applicant now has outstanding, demand notes issued prior to the enactment of Section 614-53-54 and 55, General Code, the loans procured by which were expended for the construction, completion, extension and improvement of its facilities, which notes should now be paid and discharged or refunded, and which notes are of the principal sum of \$8,000.

4. That the applicant now has outstanding mortgage bonds of the principal sum of \$10,000.00, which bonds mature in 1921 and must, on or before said date be paid and discharged or refunded.

5. That the issue of applicant's said preferred capital stock of the par value of \$30,000.00 is reasonably required and the money to be procured thereby necessary for the reimbursement of its treasury for the aforesaid uncanceled capital ex-

penditures and the payment and discharge of the aforesaid indebtedness (note and bond).

and is satisfied that consent and authority for the issue and disposition of said capital stock should now be granted. It is, therefore,

Ordered, That said The Wellington Telephone Company be, and hereby it is authorized to issue its six per cent. preferred capital stock of the total par value of thirty thousand dollars (\$30,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to wit:

1. The reimbursement of its treasury for the sum of \$12,000.00 not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, between the dates January first, 1815, and June thirtieth, 1919, for the construction of additions, extensions and improvements to its plant and facilities.
2. The payment and discharge of its demand notes of the principal sum of \$6,000.00, issued as aforesaid.
3. The payment and discharge of its mortgage bonds, of the principal sum of \$10,000.00, issued to mature in 1921.

It is further

Ordered, That, forthwith upon the acquisition of any of said notes or bonds, the same be rendered non-negotiable and, upon the acquisition of the whole thereof, cancelled and destroyed. It is further

Ordered, That the applicant make verified report to this Commission, semi-annually within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said preferred capital stock, the expenditure of the proceeds thereof and the disposition of said notes and bonds pursuant to the terms and conditions of this order. It is further

Ordered, That this proceeding be continued for the receipt and consideration of further data respecting the applicant's proposed program of reconstruction and the making of such further and other orders herein as may be required to consent to and authorize the issue of additional capital stocks to procure the money with which to pay therefor.

No. 1735—In the Matter of the Application of The Farmers Telephone Company of Bloomville, Ohio, for Authority to Sell Certain Property to the Lykens Telephone Company, a Mutual Concern. Prayer Granted.

(Dated October 16, 1919.)

This day this cause came on for final consideration upon the application of The Farmers Telephone Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent to and authority of this Commission for the sale, by the applicant, of a certain pole and wire line, extending some six miles, along the west side of the Marion Road in Lykens Township, Crawford County, Ohio, to The Lykens Telephone Company, a mutual concern:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by such sale of telephone property and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for said sale of such property should be granted. It is therefore,

Ordered, That said The Farmers Telephone Company (of Bloomville, Ohio), be, and hereby it is authorized to sell and convey to The Lykens Telephone Company (a mutual concern), the poles and wire-carrying equipment now owned and operated as a part of its toll line, situated on and along the west side of the Marion Road in Lykens Township, Crawford County, Ohio, a distance of six miles, excluding therefrom the Bucyrus Toll Line Circuit from Bloomville to Lykens. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service; nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

No. 1762—In the Matter of the Joint Application of The Farmers' Telephone Company of Bloomville, Ohio, and the Bucyrus Telephone Company of Bucyrus, Ohio, for Authority to Respectively Sell and Purchase Telephone Property.—Prayer Granted.

(Dated October 16, 1919.)

This day this cause came on for final consideration upon the joint application of The Farmers' Telephone Company, (a corporation duly organized and existing under the laws of Ohio, with its principal office at Bloomville, Ohio), and The Bucyrus Telephone Company, (a corporation duly organized and existing under the laws of Ohio, with its principal office at Bucyrus, Ohio), asking the consent to and authority of this commission for the sale, by said first named applicant, and the purchase by the latter, of a circuit of No. 10 iron telephone wire extending from the corporation line of the city of Bucyrus to the hamlet of Brokensword.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the varied allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon and for the purposes of this proceeding, that the convenience of the public will be promoted by such purchase and sale of telephone property and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for sale and purchase of such property should be granted. It is therefore,

Ordered, That said The Farmers' Telephone Company (of Bloomville, Ohio) be, and hereby it is authorized to sell and convey to The Bucyrus Telephone Company the circuit of No. 10 iron wire now in operation on and along a route commencing at the corporation line of the city of Bucyrus and running thence west to Sears Corners, thence north to the hamlet of Brokensword and terminating at a point in Brokensword where the public highways intersect; and said The Bucyrus Telephone Company hereby is authorized to purchase and acquire said property and to pay therefor the agreed consideration of two hundred dollars. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or

diminution of service; nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

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No. 1777—In the Matter of the Joint Application of The Chesapeake & Potomac Telephone Company of West Virginia and the Marietta Western Telephone Company. Prayer Granted.

(Dated October 18, 1919.)

This day this matter came on for final consideration upon the joint application of The Chesapeake & Potomac Telephone Company of West Virginia, (a corporation organized and existing under the laws of West Virginia and duly authorized to do business in the state of Ohio), and The Marietta Western Telephone Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this commission, of the making and entering into, by said applicants, of a certain contract or articles of agreement, providing, among other things and in chief, for the retention of the physical connection now existing between their respective systems and the continued interchange of toll business thereby.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds, from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding that the convenience of the public will be promoted by the retention of said physical connection and the continued interchange of toll business by the applicants, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the retention of said physical connection and the continued interchange of toll business by the applicants should be granted. It is therefore.

Ordered, That said The Chesapeake & Potomac Telephone Company of West Virginia and said The Marietta Western Telephone Company be, and hereby they are authorized to retain the physical

connection now existing between their respective systems and to continue to interchange toll business as provided by law. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

DEPARTMENT OF BANKS AND BANKING

COMPILATION OF RETURNS OF STATE BANKS

The compilation just completed of the returns of all State Banks, as the close of business September 12th, 1919, shows that their resources have not only reached the highest level thus far attained in the history of State Banks, but have made the unusual growth of nearly fifty-three million dollars during the 74 days since the call of June 30. At the call of September 12 total resources aggregated \$1,213,979,627. Resources of Incorporated Banks reported were \$1,158,830,216 and those of unincorporated \$55,149,411.

Aggregate deposits on September 12 were reported at \$1,053,857,051, showing an increase of over 45 million dollars since June 30. While net withdrawals of government and other special deposits on Liberty and Victory Loan subscriptions have been, approximately, eight million dollars for the same period, Commercial and Savings Deposits show the remarkable increase of over fifty-three million dollars. For the first time deposits in the incorporated banks exceeded the billion dollar mark and were reported at \$1,005,450,698, showing an increase during the past five years of, approximately, five hundred twenty-eight million dollars. The increase for the past year amounted to nearly one hundred ninety-two million dollars, the greatest ever reported for a like period.

Bank reserves show a marked increase since the call of June 30 and on September 12 stood at \$150,524,643. The excess reserve over and above the amount required to offset the increase in deposit liabilities amounted to \$49,730,377. However, it is of interest to mention the fluctuation of gold, gold certificates and paper currency which constitute a part of the reserves. At the call of June 20, 1917, the first time gold certificates were reported with gold coin, and the banks as a part of their reserve, gold to the amount of \$10,561,320 and paper currency at \$18,712,220. At the last call September 12, they held as a part of their reserve gold to the amount of \$2,627,635 and paper currency \$25,422,739, showing a decrease in gold holdings during the period of, approximately, eight million dollars and an increase in paper currency of almost seven million dollars.

There is apparently no abatement in the general industrial activity. The continued liquidation of government securities and the more than corresponding increases in loans and discounts make the most important changes in the banking resources. During the six months period since the call of March 4, government securities have been liquidated to the amount of, approximately, thirty million dollars and loans and discounts increased over one hundred and ten million dollars.

The aggregate resources of State Member Banks of the Federal Reserve System continue to increase and at the call of September 12, stood at \$482,273,947 as against \$460,286,236 on June 30.

The 615 state and 164 private banks reported total resources of \$1,213,979,627, an increase of \$52,863,802 as compared with June 30, and an increase of \$220,976,508 since the call of August 31, 1918.

Total deposits on September 12 stood at \$1,053,857,051, an increase of \$45,264,596.96 since June 30, and an increase as compared with August 31, a year ago, of \$194,393,313. Included in this are savings deposits to the amount of \$477,243,265, an increase as compared with June 30 of \$11,463,088 and an increase as compared with a year ago of \$72,638,635. As a part of their deposit liabilities, the banks are still carrying special deposits to the amount of \$5,227,526 on Liberty and Victory Loan subscriptions. United States deposits, exclusive of Postal Savings, aggregate \$9,109,071, or a decrease of \$3,548,859 since the call of June 30.

Loans and discounts totaled \$662,221,600 or a gain of \$49,588,093 since June 30, and an increase as compared with August 31, 1918, of \$134,183,390. Loans on real estate stood at \$216,682,184, showing a gain of \$12,951,400 as compared with June 30, and an increase of \$17,320,126 as compared with August 31, a year ago. Unsecured loans, including acceptances purchased or discounted, were reported at \$227,986,233 or an increase over June 30 of \$21,725,671. The proportion of loans and discounts to total deposits in incorporated state banks September 12 was 62.96%, as compared with 60.86% June 30, and 61.37% on August 31, 1918. The proportion of unsecured loans was 20.66% as compared with 19.43% June 30 and 19.59% on August 31, a year ago. The proportion of loans on real estate to capital, surplus and total deposits on September 12 was 18.96% as compared with 18.58% on June 30 and 21.16% as compared with August 31, 1918.

United State bonds, totaled \$105,541,313, a reduction of \$11,827,187 since the call of June 30, but an increase as compared with

August 31, 1918, of \$33,009,875. The proportion of United States bonds to total deposits was 10.06% as compared with 12.22% at the call of June 30.

State, county and municipal bonds totaled \$77,191,340, an increase of \$3,181,077 since June 30, and an increase as compared with August 31, 1918, of \$3,628,764.

Total bonds and securities held September 12 stood at \$322,237,556, being \$6,699,409 less than at the call of June 30, but \$45,052,530 more than was reported August 31, 1918.

Amount due from reserve and other banks September 12 was \$133,280,890 an increase as compared with June 30 of \$8,720,240 and an increase of \$20,045,215 as compared with August 31, 1918.

Gold and gold certificates amounted to \$2,627,635, showing a further decline since June 30, of \$30,185 and a decrease as compared with August 31, a year ago, of \$1,218,078.

Silver, currency and subsidiary coin amounted to \$28,585,297 September 12, an increase as compared with June 30 of \$1,346,062 and an increase as compared with August 31, a year ago, of \$8,642,665. The amount of paper currency held by the banks increased, approximately \$8,000,000 since August 31, 1918, and now stands at \$25,422,739.

Total reserve held on September 12 was \$150,524,643, an increase of \$19,862,597 since June 30, and an increase of \$26,076,456 as compared with August 31, 1918. Their surplus reserve over and above the amount required on September 12 totaled \$49,730,377, an increase of \$16,092,078, as compared with June 30, and an increase as compared with August 31, a year ago, of \$10,510,224.

Bills payable and rediscounts on September 12, were reported at \$17,161,599, an increase as compared with June 30 of \$4,297,528 and an increase as compared with August 31, a year ago, of \$6,664,914. Bills payable and rediscounts with the federal reserve bank September 12 amounted to \$11,998,999, as compared with \$7,460,817 June 30.

Capital, surplus and undivided profits in incorporated banks September 12 amounted to \$121,098,609 as compared with \$115,843,405 August 31, a year ago. Incorporated banks added to their capital during the year over \$2,500,000 and to their surplus, approximately \$3,400,000.

ATTORNEY GENERAL

Succession to Bonds is Taxable by a State, Either When the Bonds Themselves Are Kept Within the State or When the Decedent Was a Resident of the State, but Not Merely on Account of the Fact That the Issuing Corporation is Domiciled Within the State.—Successions to Registered Bonds Should be Regarded as Taxable When the Same Are Issued by Ohio Private or Municipal Corporations or Subdivisions, Regardless of the Place at Which the Securities are Kept. A Municipal Corporation or a School District, Township or County in This State, or Any Officer Thereof, Would Not be Liable for the Penalty Provided by Section 5348-2 General Code in the Event of Failure to Withhold the Inheritance Tax, Etc., in the Case of Registered Bonds.—Section 5348-2 General Code Applies to the Transfer of Registered Bonds and Their Registration in the Name of the Transferee in Case of the Accrual of the Inheritance Tax on Account Thereof, and Such Inheritance Tax Accrues in All Cases in Which a Private Corporation Issuing the Registered Bonds is Organized Under the Laws of Ohio or Has Its Principal Place of Business in This State.—A Foreign Corporation Admitted to do Business in This State, Transferring Stock on its Books Kept in Another State from the Name of Decedent to That of His Executor, Administrator or Other Successor Would not Come Within the Operation of the Above Section Even Though the Decedent Was Domiciled in This State, Whether the Corporation had Complied With the Laws of This State or not. On the Contrary, a Foreign Corporation Actually Keeping its Stock Books in This State and Making the Transfers Here, Would at Least, if Registered as a Foreign Corporation Under the Law of This State, be Within the Terms of the Statute.

No. 718—(Opinion Dated October 21, 1919.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your letter of September 15th, requesting the opinion of this department, as follows:

“In connection with the administration of the inheritance tax act, will you be good enough to advise us on the following matters:

1. To what extent is the registration and transfer of registered bonds (both as issued by subdivisions of the state and by private corporations) controlled or regulated by the provisions of the law mentioned? Similarly as to bonds which have not been registered?

2. Where such bonds have been issued and are held outside the limits of the state by a non-resident, are they subject to inheritance tax in Ohio? Or is the actual location of the bonds immaterial?

3. Where the estate of an Ohio decedent possesses shares of stock in a foreign corporation, is the transfer of such stock on the books of the company subject in any way to the provisions of the second and subsequent sentences of Section 5348-2 when such corporation has been admitted to do business in this state? Similarly when the corporation has not been admitted to do business in this state?"

Your first two questions may be considered together as a negative answer to the second question as applied to either class of bonds mentioned would make unnecessary any answer to your first question.

Accordingly, the first question to be considered is as to whether bonds which have not been registered and are held outside the limits of the state by a non-resident are, in case of the death of such resident and in respect to the succession thereto, subject to taxation in Ohio because the issuer of the bonds is an Ohio municipality or other subdivision or private corporation organized under the laws of this state.

This question must be answered, in the light of the authorities, in the negative. The inheritance tax law of Ohio is not broader in its reach than those of many other states in which this question has arisen, notably New York, and the holdings in such other states are uniform on the point that ordinary coupon bonds issued by a corporation within the taxing state are not "within the state" for the purpose of the incidence of the inheritance tax in case of their transfer by death of a non-resident.

In re Bronson, 150 N. Y. 1; 34 L. R. A. 238;
In re Whiting, 150 N. Y., 33; 34 L. R. A. 232;
Re Fearing, 200 N. Y., 344;
Hamble vs. Dawson, 67 Wash., 81.
Re Fearing, 123 N. Y. Supp. 396;
Re Preston, 78 N. Y. Supp. 91;
Eidman vs. Martinez, 184 U. S. 587.

If there is a distinction in principle between the rule announced by these decisions and the rule referred to in the recent opinion of

this department on the question as to the situs for inheritance tax purposes of an insurance policy payable to the estate of a non-resident decedent and issued by a corporation organized under the laws of the taxing state, it lies in the fact that coupon bonds are negotiable instruments designed to pass more or less current, and therefore taking their situs for all purposes, including succession, at the place where they are owned or even where they are held and kept.

See—In re Whiting, 150 N. Y., 27;

In re Morgan, 150 N. Y., 36;

Western Insurance Co. vs. Holliday, 126 Fed. 259;

People vs. Griffith, 245 Ill. 541.

See also—Tafel vs. Lewis, 75 O. S. 182.

But see—Eidman vs. Martinez, *supra*.

In other words, the general current of authority is to the effect that succession to bonds is taxable by a state, either when the bonds themselves are kept within the state or when the decedent was a resident of the state, but not merely on account of the fact that the issuing corporation is domiciled within the state.

So far as ordinary coupon bonds are concerned, therefore, your second question is answered by the foregoing, and an answer to your first question with respect thereto is unnecessary.

The case would seem to be different as regards registered bonds. The legal effect of the registration of a bond is to destroy its negotiability, in that the obligor is not liable to any holder of the instrument in due course, but may discharge its obligation by paying it to the registered owner. Such bonds, are moreover, usually secured by some sort of a mortgage or other collateral security. In the case of private corporations, such collateral security usually consists of a trust deed or other instrument having the effect of a mortgage of property; in the case of municipal corporations and subdivisions of the state, the collateral security consists of tax levies which the subdivision is compellable to make for the purpose of raising a fund to meet the principal and interest of the bonds. It is obvious, as stated by Vann J., in his dissenting opinion in *Re Bronson*, *supra*, (p. 25) : that

“Where the bonds are registered, * * * * the transfer can only be effected at an office designated by the corporation. * * * It would be necessary, upon this assumption, for the person entitled to succession to those bonds to come into the state of New York, directly or indirectly, to complete his title. The transaction, by virtue of the contract itself, would become localized, for the transfer would require a corporate act in this state done under the sanction of our laws, and possibly by virtue of an appeal to our courts.

This dictum of Vann, J., (for the bonds in the case were actually coupon bonds and not registered bonds) is the only expression of opinion which has been found suggesting a distinction between registered and coupon bonds. Its effect is weakened by the fact that Vann, J., also argued for the subjection to tax of the succession to coupon bonds of New York corporations held by non-resident decedents outside of the state, in which respect his position was not accepted by a majority of the court of which he was a member. It is true that the case of *Callahan v. Woodbridge*, 171 Mass., 595, goes to the extent of holding that any bonds belonging to the estate of a non-resident, whether issued by Massachusetts corporations or not, and whether actually held in Massachusetts or not, were subject to the Massachusetts inheritance tax when the will was probated in Massachusetts. This department has, however, been hitherto unable to follow this decision, and it is clearly out of line with the current of authorities.

It is strange that no case is to be found dealing with registered bonds. In view of the character of such obligations, however, and the necessity of resorting to the courts of the taxing state for the purpose of perfecting the succession, which does not exist in the case of negotiable bonds, it would seem that upon the principles laid down in the former opinion of this department with respect to insurance policies, heretofore referred to, successions to such bonds should be regarded as taxable when the same are issued by Ohio private or municipal corporations or subdivisions, regardless of the place at which the securities are kept (which in this case would seem to be immaterial, though the decisions above cited would tend in the other direction.) At least it is the advice of this department that the administrative rulings should be that the tax is collectible under such circumstances, so that a judicial ruling on the point may be properly secured.

This conclusion as to your second question, in so far as it relates to registered bonds, makes necessary further consideration of your first question as relating to such bonds, and particularly to the provisions of Section 5348-2 of the General Code with respect thereto. This section has been quoted in other opinions of the department and its quotation will not now be repeated. Suffice it to say that the language therein employed as descriptive of the institutions which are prohibited from making transfers except with the consent of the commission and upon retention of a sufficient amount to pay the tax is not broad enough to include corporations or quasi public corporations. As a matter of the interpretation of the stat-

ute, therefore, it is concluded that a municipal corporation or a school district, township or county in this state, or any officer thereof, would not be liable for the penalty provided by that section in the event of failure to withhold the tax, etc., in the case of registered bonds.

It is just as clear that the section does apply to transactions of this sort on the part of private corporations. The statute provides that—

“No safety deposit company, * * * corporation, etc. * * * having in possession or in control or custody in whole or in part securities * * * belonging to or standing in the name of a decedent * * , including the shares of capital stock of, or other interest in, such safety deposit company, * * * corporation or other institution, shall * * * transfer the same to any person whatsoever * * * without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery and transfer.”

The retention of which the section speaks could be made of accrued interest, or in case the bonds were due, of a part of the principal thereof, so that the section has possible application, though nothing is to be done excepting to make a transfer on the books.

It is the opinion of this department that Section 5348-2 applies to the transfer of registered bonds and their registration in the name of the transferee in case of the accrual of the inheritance tax on account thereof, and that such inheritance tax accrues in all cases in which a private corporation issuing the registered bonds is organized under the laws of this state or has its principal place of business, where its corporate concerns are managed and its books for the registration and transfer of bonds are kept, in this state. This opinion is given with some qualification, as heretofore stated, because of the lack of authority on this point.

Coming to your third question, it will be at once seen that it involves primarily a consideration of the section last above referred to and of that part of it which has been quoted. The first sentence of the section which has been omitted speaks of “corporations organized or existing under the laws of this state” and would not apply to foreign corporations, inasmuch as the phrase “existing under” is probably intended to apply to corporations created by special act prior to the adoption of the constitution of 1851. The second

sentence is not so qualified, and so far as the force of its own terms is concerned, would apply at least to all corporations to which any laws of this state might apply, which would include foreign corporations admitted to this state for the purpose of doing business, Foreign corporations not so admitted could scarcely be subject to the laws of this state. But this question will be further considered herein. Before considering it the pursuit of another line of thought seems appropriate. The sentence under consideration prohibits certain acts, and the last sentence of the section imposes a liability which is in the nature of a penalty, in that it is consequent upon failure to comply with the statute. The question now arises as to whether the act commanded by the statute is one that could take place outside the territorial jurisdiction of the state. The section purports to regulate the institutions referred to in respect of certain acts, namely, the delivery or transfer of certain kinds of securities or assets to persons. Aside from the question as to what sort of a construction this statute should receive, it seems obvious that, however phrased, it could not apply to acts committed outside the state of Ohio. No authority has been found on this point, though the section is of a type which is frequently employed in inheritance tax laws. The general principle is that the penal or regulatory laws of a state, including those regulations which have to do with the collection of revenue, have application only within its boundaries so far as non-residents of the state are concerned, though it is possible for the state to prohibit acts of its citizens or residents or creatures, whether committed within or without the state. This is the general principle in conflict of laws, and has application here.

At the most, then, the section regulates transfers taking place in this state and involving action in this state on the part of the institutions referred to therein. Therefore a foreign corporation admitted to do business in this state, transferring stock on its books kept in another state from the name of a decedent to that of his executor, administrator or other successor, would not come within the operation of this statute even though the decedent was domiciled in this state, whether the corporation had complied with the laws of this state or not.

On the contrary, a foreign corporation actually keeping its stock books in this state and making the transfer here, would at least, if registered as a foreign corporation under the laws of this state, be within the terms of the statute, and it is the opinion of

this department that under such circumstances the statute would apply.

These conclusions leave open but one question, namely, as to whether a foreign corporation not registered to do business in this state, but keeping its stock books here and making the transfer here, would be subject to the statute in case of the transfer of stock belonging to a resident decedent. This question is very doubtful, and it would seem hardly possible that it could ever arise in practice.

One thing is certain: unless the corporation is authorized to transact business in this state, or unless it has property in this state subject to attachment, the courts of this state could not acquire jurisdiction over it for the purpose of enforcing the collection of the tax or penalty from the corporation. Inasmuch as the primary liability is not cast upon the corporation for the tax, but, as previously intimated, the liability of the corporation is created by a statute which is penal in its nature, it is very much to be doubted that the courts of any other state would enforce collection of the amount. So that in the case last imagined the only possibility of even raising the question suggested would exist if the corporation should have property subject to attachment in this state.

Unless the Commission particularly desires advice on this question, it will be held in abeyance.

✽

Where an Election Was Held in a School District Under and by Virtue of Senate Bill No. 187, on August 12th, 1919, and a Vote of the Majority of the Electors of Said District was Against Any Levy Under Said Bill, Such Board of Education is not Precluded Thereby From Taking Advantage of the Provision of House Bill No. 567, Since Both are Extraordinary Measures for the Raising of Revenues and Boards of Education can Avail Themselves of Either but Not Both of Said Bills in Order to Carry on the Function of Public Education Until Permanent Revenues Can be Provided.

No. 653—(Opinion Dated September 24, 1919.)

Hon. Haveth E. Mau, Prosecuting Attorney, Dayton, Ohio:

Dear Sir: Acknowledgment is made of the request of William K. Marshall, Assistant Prosecuting Attorney of Montgomery County, for an opinion upon the following statement of facts:

“Where an election was held in a school district under and

by virtue of Senate Bill No. 187, and the vote of the majority of electors in said district was against any levy under said bill, is such board of education thereby precluded from issuing bonds under House Bill, No. 567.

"In view of the fact that both of these acts were passed for the purpose of furnishing relief to school districts, it seems to me that a board of education would be entitled to issue bonds under House Bill No. 567, although electors of the district refused to authorize by vote a levy under Senate Bill No. 187.

"In case bonds were issued under House Bill No. 567, under such circumstance and were offered to the Industrial Commission and accepted, the proceedings under which they were issued would be undoubtedly submitted to your office for approval, and you would then have the matter to pass upon, so I deemed it wise to have your opinion before advising the issuing of bonds."

Senate Bill 187 reads in part as follows:

"Section 1. In lieu of proceeding under an act entitled, 'An act to authorize the taxing authorities of counties, municipal corporations, townships and school districts to fund deficiencies in operating revenues for the year 1919, issue bonds and to levy taxes for such purposes but not otherwise, the board of education of any school district may levy in the year 1919, not to exceed two mills for any and all purposes for which such boards may levy taxes, upon securing the approval of the electors of such district. * * *."

Then follows the manner and method by which the special school election may be held on the 12th day of August, 1919, and the respective duties devolving upon the board of education and the deputy state supervisors of elections in the proper submission of the question of levying an additional tax not to exceed two mills for any and all purposes for which such boards may levy taxes.

Section 3 provides:

"If a majority of the electors voting on the proposition so submitted vote in favor thereof, upon the certification and canvass of such result it shall be lawful for such board of education to levy taxes on the duplicate made up in the year 1919, at the aggregate rate so authorized for such purposes in addition to all other taxes for like purposes. * * *"

You indicate in your statement of facts that an election was held in a school district under and by virtue of Senate Bill 187 and the vote of the majority of the electors voting in such district was against the levy asked for by the board of education. In a personal interview you indicate that this was an entire township dis-

trict situated in Montgomery county, in which the vote was approximately, 40 votes against the levy and 24 votes in favor of the same, a total vote of possibly 64, or less than one-fourth of the electors of such township. You now inquire if after such levy was defeated on August 12th, under Senate Bill 187, such action on the part of the electors who went to the polls would prevent the board of education from issuing bonds and taking care of the proper school expenses in the second tax measure known as House Bill 567.

It is important to notice the opening section of Senate Bill 187, quoted above, but which if transposed will read as follows:

“* * * Upon securing the approval of the electors * * * the board of education of any school district may levy in the year 1919 not to exceed two mills for any and all purposes for which such boards may levy taxes in lieu of proceedings under an act entitled, ‘an act to authorize the taxing authority of counties, municipal corporations, townships and school districts to fund deficiencies in operating revenues for the year 1919, issue bonds, and to levy taxes for such purposes, but not otherwise. * * *’”

It would seem from an analysis of the language used in section 1 that the prime factor necessary is “upon securing the approval of the electors”, then the provision mentioned in Senate Bill 187 can be used. In other words, if no approval of the electors has been received, it would seemingly follow that the electors have not taken advantage of Senate Bill 187, which is a law that may be used by the board of education in lieu of proceedings under House Bill 567. Here an attempt was made to provide the necessary funds for the school board when operating under Senate Bill 187. The approval of a majority of the electors was not secured.

The intention of Senate Bill 187, as well as House Bill 567, was to provide immediate revenues for urgent needs in the operation of the schools until permanent revenues can be provided. Clearly a board of education cannot use both House Bill 567 and Senate Bill 187, for the latter says that in lieu of proceedings under House Bill 567, and upon securing the approval of the electors, Senate Bill 187 may provide the necessary revenue.

Prior opinions of the Attorney General hold that the mere fact that the electors in a school district have, by a majority vote, failed to authorize bond issues or taxes under certain sections, does not cut off the school board from recourse to other sections, and bearing upon this point attention is invited to the following excerpts from an opinion of the Attorney General, found in Annual

Reports of the Attorney General for 1911-1912, page 1384:

"When it becomes necessary for a board of education to improve school buildings by reason of an order from the inspector of workshops and factories, and such improvements cannot be made within the ordinary limitations of the Smith tax law, and when, furthermore, the electors have repeatedly refused to authorize bond issues, under Sections 7625 and 7628, General Code, the board of education may have recourse to Sections 7629 and 7630, General Code.

"By these sections, they may issue bonds for this purpose in a sum not to exceed the amount of a tax at the rate of two mills for the year next preceding the issue, and may extend the payment of such bonds over a period of forty years."

It will be noted that the above opinion speaks of an emergency that exists where the inspector of workshops and factories has condemned a school building and that the improvements necessary cannot be made within the ordinary limitations of the Smith tax law. The case is parallel to the one at hand in a sense, because section 4 of Senate Bill 187 provides as follows:

"This act is hereby declared to be an emergency law necessary for the immediate preservation of the public peace and safety. The necessity therefore lies in the fact that in many school districts of the state, under the limitations on tax levies provided by law, deficiencies exist in operating revenues, arising from the abnormal increase of operating expenses and the desirability of increasing the compensation of school teachers; so that unless afforded extraordinary means of raising revenues the boards of education of such district will be unable to carry on the function of public education until permanent revenues can be provided. Therefore this act shall go into immediate effect."

House Bill 567 is also an emergency act and its emergency clause is section 14, which reads as follows:

"This act is hereby declared to be an emergency law necessary for the immediate preservation of the public peace, health and safety. Such necessity arises from the fact that under existing limitations on tax levies deficiencies exist in many of the subdivisions of the state, arising largely from the recent abnormal increase of operating expenses, and the anticipated loss of revenue from the liquor tax; and by reason thereof such subdivisions, unless immediately afforded extraordinary means of extinguishing such deficiencies and meeting fixed charges and current expenses will be unable to carry on the ordinary operations of government until permanent revenues can be provided and made available. Therefore, this act shall take effect immediately."

A comparison of the two emergency sections appearing in the two laws, Senate Bill 187 and House Bill 567, indicates that the necessity in each case was the same, the exception being that Senate Bill 187 was a measure which school boards alone could use and House Bill 567 is a law which all taxing subdivisions, including counties, municipal corporations, townships or school districts, may take advantage of.

The intention of the general Assembly seems to have been primarily to give temporary financial relief to school districts and boards of education were given two avenues which they might use, selecting either bill as their avenue. Senate Bill 187 provides that in lieu of using House Bill 567, the board of education can use Senate Bill 187, but provides clearly that the approval of the electors in the district necessary. It would seem, therefore, that where a school board had attempted to use the provisions of Senate Bill 187 and had failed, none of their rights of operation under House Bill 567 would be lost; it cannot be denied that their debts would be just the same as they were before, their obligations unchanged, and the need of relief would still exist. Had they availed themselves of Senate Bill 187, clearly they could not use House Bill 567, because the former says in its opening sentence, "in lieu of", but if they accomplish nothing in their attempt under Senate Bill 187, the question is, was any burden put upon the tax payers by that board of education through Senate Bill 187? Clearly not.

It would therefore follow, and the opinion of the Attorney General is, that where an election was held in a school district, under and by virtue of Senate Bill 187 on August 12, 1919, and a vote of the majority of the electors of said district was against any levy under Senate Bill 187, such board of education is not precluded thereby from taking advantage of the provisions of House Bill 567, since both are extraordinary measures for the raising of revenue and boards of education can avail themselves of either Senate Bill 187 or House Bill 567, but not both, in order to carry on the function of public education until permanent revenues can be provided.

SUPREME COURT

MOTION DOCKET.

10285—Otis E. Hawk v. Jeremiah J. O'Brien et al. Motion for an order directing the court of appeals of Mahoning county to certify its record. Overruled.

10287—State of Ohio v. Jacob Theiss. Motion for leave to file petition in error to the court of appeals of Butler county. Overruled.

10288—William Harrison Cowdry v. State of Ohio. Motion for leave to file petition in error to the court of appeals of Butler county. Overruled.

10289—The Board of County Commissioners of Butler County, Ohio, v. Martin Beatty. Motion for an order directing the court of appeals of Butler county to certify its record. Overruled.

10302—The East Liverpool City Ice Co. v. Elizabeth Mattern. Motion by defendant to require plaintiff to file printed record containing entire testimony and charge of the court in cause No. 16329 on the general docket. Overruled.

10303—George H. Phelps on behalf of the City of Findlay v. The Logan Natural Gas & Fuel Co. et al. Motion by plaintiff to dispense with printing certain parts of record in cause No. 16346 on the general docket. Sustained.

10304—Henry W. Morgenthauer v. The First National Bank of Bowling Green. Motion for an order directing the court of appeals of Wood county to certify its record. Overruled.

10306—William M. Schinnick et al. v. State of Ohio ex rel. W. C. Bowers. Motion for an order directing the court of appeals of Muskingum county to certify its record. Sustained.

10307—George S. Iddings v. State of Ohio. Motion for an order directing the court of appeals of Cuyahoga county to certify its record. Overruled.

10308—August W. Bruck v. The Quickwithdrawal Bldg. Assn. et al. Motion for an order directing the court of appeals of Hamilton county to certify its record. Sustained.

10309—Cora V. Bruck v. The Quickwithdrawal Bldg. Assn. et al. Motion for an order directing the court of appeals of Hamilton county to certify its record. Sustained.

GENERAL DOCKET.

15220—The Fidelity & Deposit Company of Maryland v. H. P. Wolfe et al., Trustees. Franklin. Judgment affirmed.

15352—State of Ohio ex rel. Clayton Fitch v. George S. Howells, Judge of Municipal Court. Cuyahoga. Dismissed for failure to file printed record.

16435—The State of Ohio ex rel. F. W. Steller et al., Trustees, v. John A. Zangerle, Auditor. In Mandamus. Writ denied.

SECRETARY OF STATE

NEW CORPORATIONS

Prospect Tailoring Co., Cleveland, \$10,000. N. Slavin, Ben Cronoff, Morris H. Wolf, Anna Goold, Fred S. Newbauer.

N. Slavin Tailoring Co., Cleveland, \$25,000. N. Slavin, Pauline Slavin, Morris H. Wolf, Anna Goold, Fred S. Newbauer.

Schenck Electrical Appliance Co., Cleveland, \$10,000. Edward J. Cherney, William H. Chapman, V. L. Stanford, William H. Gillie, E. L. Sindles.

Sanitary Baking Co., Akron, \$50,000. J. P. Schaeffer, T. F. McCambridge, F. I. Russ, C. F. Schnee, John C. Grimm.

A. W. Twartz Restaurant Co., Akron, \$25,000. A. W. Twartz, F. D. Russ, C. F. Schnee, Joseph Thomas, John C. Grimm.

Toledo Automotive Products Co., Toledo, \$100,000. A. C. Ruehley, M. Spooner, Stanley J. Hiett, P. R. Taylor, E. H. Emmenecker.

Dewine-Milligan Co., Yellow Springs, \$120,000. John Dewine, Dennis Dewine, Robert Dewine, George Dewine, Howard Hamma.

Paragon Equipment Co., Cleveland, \$100,000. Robert J. Mitchell, Lew S. Hoover, George Beoin, Frank V. Bergenson, V. R. Phelps, C. Widdersheim, B. Jonap.

Forest City Builders' Supply Co., Cleveland, \$25,000. F. A. Sherrer, Jr., R. H. Davis, Fred J. Young, M. Sainsbury, H. Rogers.

Knickerbocker Theatre Co., Columbus, \$5,000. Robert S. Hamilton, Stuart R. Harrison, A. K. Potter, J. C. Hazelton, L. O. Brown.

Euclid-Fortieth Co., Cleveland, \$50,000. R. F. Bingham, S. G. Ryder, E. E. Northway, W. F. Finley, Dr. T. H. Terry.

Brookside Motor Sales Co., Cleveland, \$50,000. A. E. Literaty, Alois Sperling, Frank Legesnary, Mary Legesnary, John Sperling, Anna Sperling.

G. A. Shields Co., Columbus, \$50,000. G. A. Shields, Hurley Martin, R. K. Glass, O. F. Rehn, J. F. Atwood.

Strickland Co., Cleveland, \$10,000. D. J. Strickland, H. D. Koblitz, S. I. Davis, M. J. Anderson, M. Holben.

Crawford-Hough Building Co., Cleveland; \$100,000. Emmett P. Dowling, John L. Dowling, Richard J. Moriarity, Hildur V. Malsten, Anita Bauer.

Triangle Reaky Co., Akron; \$100,000. E. E. Quirk, F. I. Russ, C. F. Schnee, Joseph Thomas, John C. Grimm.

Hughes Coal Co., Shawnee, \$30,000. D. W. Hughes, Harry G. Hughes, William Schuster, Thomas Humphrey, P. R. Gibbon, Robert E. Hughes, William Humphrey, Thomas Lorimer.

Ralke Distributing Co., Dayton; \$10,000. J. L. Weigand, P. G. Kette, A. C. Braun, O. B. Smith, R. R. Miller.

Fisher Body Ohio Co., Cleveland; \$10,500,000. Richard Inglis, Thomas H. Jones, Gardner Abbott, Frank H. Ginn, Grover Higgins.

Wood County Dairy Co., Bowling Green; \$250,000. Frank E. Lamb, J. E. Kelly, R. B. Rae, L. P. Reigle, William Dunnipace, Robert Dunnipace, C. W. Powell.

Reliance Tire & Rubber Co., Wadsworth; \$300,000. George P. Hoffman, E. McAllister, M. F. Miller, R. A. Auble, A. H. Rohrer.

Cuyahoga County Co-operative Co., Cleveland; \$25,000. Charles W. Hadlock, Walter F. Holmes, Vern noC. Barlow, Plymon C. Tuttle, Harold W. Hughes.

Miami Ribbon & Carbon Co., Dayton; \$10,000. Theodore Haberkorn, O. W. Wortman, P. J. Sheridan Jr., M. E. Wortman, J. A. Wortman.

Baer-Glauber Co., Cleveland; \$1,000. William C. Keough, M. M. Roche, B. Brabeck, L. Leppla, G. D. Kay.

Tratsil Electric Baking Co., Toledo; \$10,000. Sigmund Sanger, George P. Hahn, T. Wooster, M. Siglow, Otto H. Spangler.

Youngstown Nuford Co., Youngstown; \$10,000. Ralph M. Drucker, A. Krejci, A. L. Dietz, Max P. Goodman, Alfred L. Steuer.

Cleveland Toilet Goods Mfg. Co., Cleveland; \$1000. George Q. Kelley, A. M. Kelley, M. Bernhardt, Fred Desberg, C. A. Byrne.

Cleveland Taxicab and Service Co., Cleveland, \$100,000. Frederick Quidort, E. L. Quidort, Harold H. Burton, Joseph B. Keenan, Donald W. Kling.

City Motor Sales Co., Mansfield, \$100,000. George L. Buchan, Harry S. Black, Claude V. Marks, Eloise Buchan, Ikena Marks.

Ohio Industrial Realty Co., Bellaire, \$10,000. Wm. E. Schaefer, Naeen Moosally, K. G. Cooper, Mike Zuglan, Khalil Jacob.

White Elm Coal Co., New Lexington, \$10,000. Leo A. Roberts, Frank J. Hillis, D. N. Postlewaite, H. H. Orr, E. Hauck.

Cylinder Salvage Co., Cleveland, \$10,000. Charles G. Hartssock, Sterling Parks, William Wittlinger, E. J. Hart, Mabel R. Parks.

Gaty Construction Co., Columbus, \$25,000. W. E. Callahan, L. S. Gaty, C. Loivensohn, C. A. Pierce, M. Foody.

Alvordton Farmers' Exchange Co., of Alvordton, \$15,000. T. H. Caulkins, G. W. Maneval, John F. Neishiser, J. I. Loutsenhizer, Frank Fisher.

King and White Land Co., Cleveland, \$15,000. Percy W. White, Kenneth R. King, James H. Griswold, David E. Green, H. D. Palmer.

Western-Ohio Lumber Co., Coldwater, \$50,000. Jacob Willhoff, Joseph F. Hoyng, Edw. H. Hess, Henry Syneck, B. C. Oppenheim, Roman Raub.

Pickett's Co., Columbus, \$1,000. A. B. Pickett, W. F. Grose, Frank C. Dunbar, F. A. Pickett, H. B. Pickett.

Coldwater Home-Building and Realty Co., Coldwater, \$25,000. John R. Albers, A. R. Link, A. H. Bernard, Jr., F. Hoyng, P. F. Weamer, B. C. Oppenheim.

Rocky River Manufacturing Co., Rocky River, \$10,000. Alex Shepherd, Katherine Shepherd, James Birch, Mrs. James Birch, W. C. Adams, Laura J. Adams.

Ohio Casualty Insurance Co., Hamilton, \$200,000. B. D. Lecklider, Howard Slaneker, S. D. Fitton, S. M. Goodman, Charles Sobugen.

La Salle Realty and Investment Co., Akron, \$10,000. T. A. Trapas, Ralph A. Erra, G. D. Alexander, L. L. Koegel, J. A. Rampanelli.

Opportunity Oil Co., Lisbon, \$25,000. L. C. Buckley, W. G. Steele, H. E. Marsden, L. H. Johnson, B. W. Johnson.

Fox Toy Co., Berea, \$25,000. J. H. Fox, C. E. Fox, Hervey E. Miller, J. E. Pomeroy, Paul G. Mohler.

Foard-Davis Co., Toledo, \$10,000. H. T. Foard, William M. Davis, S. E. Foard, E. M. Sieloff, E. A. Koster.

Woodland Grocery Co., Cleveland, \$5,000. Meyer Abrams, Barnett Sherr, William H. Levenson, Willis Abrams, Anna Goold.

Bucyrus Equitey Co., Bucyrus, \$40,000. J. G. Pfeifer, T. E. Ditty, C. F. Hoover, George Sand, R. A. Chaney, O. W. Augese.

Guide Land Co., Cleveland, \$200,000. H. J. Monsen, J. D. Kauffmann, J. M. Shallenberger, C. A. Michel, B. Hengst.

Ambro Refining Co., East Liverpool, \$50,000. A. M. Ambrose, W. S. Freed, G. L. Brokow, Harry Brokow, Charles Gill.

Koren Club Co., Cleveland, \$100,000. Wm. A. Steinbrenner, Al. Grifis, C. R. Ritter, Charles A. Hyde, J. L. Wadsworth.

Middle States Rubber Co., Cleveland, \$2,000,000. James L. Lind, E. L. Heasley, Ernest Ewing, James G. Bingham, Damas Desnoyers.

Langtry Realty Co., Toledo, \$500. F. J. Lantry, Mrs. Bessie Langtry, W. C. Slater, I. W. Hill, Ben F. Garrett.

National Automotive Products Co., Cleveland, \$60,000. R. M. Ewing, Jas. L. Lind, E. L. Heasley, Damas Desnoyers, Charles A. Smith.

Stratford Phonograph Co., Elyria, \$1250. E. C. Wolfe, L. M. Sewell, A. J. Pejsa, Gilbert Morgan, Harry L. Delbel.

M. Zimmer Co., Brookville, \$50,000. Michael Zimmer, Alfred T. Zimmer, Hazel Zimmer, August Worman, Logan F. Wilson.

Outdoor Club Co., Andover, \$5000. M. Hayes, J. K. Pickett, F. A. Butler, W. E. Cole, V. M. Cole.

Simplicity Wheel Columbus Co., Columbus, \$15,000. George F. Burwell, Robert C. Byers, Louis M. Greenstein, L. W. Cargill, Walter Burwell.

Morton Oil Co., Cincinnati, \$50,000. Wm. R. Foster, Otto Deickmann, E. H. Mondrach, H. A. Hollowell, Nellie B. Arthur.

Andress-Mitchell Chemical Co., Cincinnati, \$14,000. Edward Graef, Frank J. Andress, J. Warren Mitchell, Clara Andress, Louis Schneider.

Miami Optical Co., Dayton, \$15,000. Ellis J. Finke, Louis Philipps, M. E. Wortman, A. K. Clay, Arthur W. Curkies.

McIntyre Metal Stamping Co., Cleveland, \$15,000. F. H. McIntyre, Louis B. Spaner, S. E. Boim, E. J. Abbl, Joseph Engel.

Union Transfer and Storage Co., Cincinnati, \$10,000. Nathan Shapiro, Saul Apter, Arthur Ernst, Fred A. Powers, Morris Koodish.

A. Bein Co., Portsmouth, \$50,000. Abraham Bein, Samuel Horchow, Abe Kline, M. M. Chilton, Clinton M. Searl.

Kennard Realty Co., Cleveland, \$10,000. Philip Spira, Samuel Horwitz, M. L. Mobley, M. A. Friedman, E. W. LeFever.

F. & M. Motor Car Co., Portsmouth, \$20,000. H. E. Frowine, Albert S. Maier, J. A. Leggitt, Mrs. Emma L. Frowine, H. L. Hartman.

Federal Warehouse and Storage Co., Akron, \$100,000. George R. Jackson, J. Bert Jackson, Ralph Burroughs, Elsie Maag, Alfred Herberich.

Electrical Refractories Co., East Palestine, \$25,000. F. E. Owen, Frank C. Simms, Clarence Williams, Mary M. Owen, Harriet Simms.

Begole Manufacturing Co., Coshoc-ton, \$100,000. O. P. Begole, Blake V. Mizer, G. C. Mitchell, Edgar Marshall, Sam H. Nicholas.

Perry Auto Top Co., Columbus, \$100,000. Albert E. Jones, Fred Vercoe, Frank L. Dean, George M. Smith, Philip Schneider.

Rockwell Construction Co., Cleveland, \$10,000. M. De Vaughn, Samuel Rockwell, Jr., John A. Lombard, B. F. Fiery, M. J. Monahan.

Scientific Products Co., Dayton, \$100,000. George R. Craven, W. O. Zehring, Ida Webb, Daniel Blau, Lester L. Cecil.

Richwine Ice Cream Co., Elyria, \$50,000. Lee Stroup, C. M. Braman, C. E. Blanchard, George L. Richwine, Arthur Richwine.

Summerland Beach Co., Columbus, \$10,000. E. F. Bucksell, R. Obenland, Helen M. Berner, Paul C. Mathews, Bertha M. Kearne.

Superior Rubber Mold and Equipment Co., Cuyahoga Falls, \$50,000. A. G. Hachtel, S. J. Taylor, E. Wissinger, A. C. Richards, Joseph W. Hill.

United Service Co., Cleveland, \$3,000. D. C. Paul, Wm. Arthur N. Weiss, Bert Wendling, Charles Romick, H. M. Guffey, A. L. Cauley, Jerome Bigelow, W. F. Dnar, C. E. Hart, Raymond Bietle, Maurice Epstein, L. B. Turner, A. Gerstle, E. Wolff, J. F. Fay, W. F. Nelson.

Gallon Oil and Gas Co., Gallon, \$30,000. Burr F. Modie, G. N. Knight, B. E. Place, F. W. Biehl, H. Pounder.

California Realty Co., Cleveland, \$75,000. Robert H. Roehm, George M. Roubesh, W. R. Seagrave, M. A. Maroni.

Hubbell Manufacturing Co., Cleveland, \$10,000. Harry C. Hubbell, L. G. Hubbell, G. V. Hubbell, E. W. Hornung, A. K. Hornung.

Atlas Wipers Co., Cleveland, \$10,000. John G. Benedict, J. Feuerstein, Joseph A. Benedict, Jose J. Biebelhausen, Francis E. Brandt.

Rex Rubber Co., Cleveland, \$100,000. E. E. McCloud, Sam B. Fitzsimmons, M. Grady, John A. Nash, H. C. Berg-haus.

Family Wet Wash Laundry Co., Dax-ton, \$10,000. Henry E. Eidemiller, Raymond C. Corwin, Gussie C. Corwin, Laura T. Eidenmiller, Robert E. Cowden.

Bay-Wit-Mor Realty Co., Cleveland, \$5,000. Orville Smith, Walker Nye, L. C. Wykoff, W. B. Stewart, Charles Follett.

Enterprise Candy Co., Cincinnati, \$100,000. O. F. Voss, Joseph A. Macke, Otto E. Koch, Jacob H. Feibel, Stanley J. Raine.

Pneumatic Appliance Co., Cleveland, \$25,000. T. J. Moffett, B. F. Evarts, Albert H. Manchester, M. E. Getchell, D. E. Schultz.

Super Steel Co., Cleveland, \$100,000. Louis Bloomfield, E. P. Chamberlin, F. M. Kemp, I. M. Grolle, William J. Shaver.

Plymouth Home Building Co., Plymouth, \$50,000. R. H. Nimmons, John A. Root, C. E. McClinchy, J. W. McIntire, F. B. Lofland.

Rice-Hacha Motor Co., Cleveland, \$20,000. Joseph F. Rice, L. Hacha, Adam Rice, M. E. Hacha, John Bel-linger.

Kunkle Farmers' Co-operative Association Co., Kunkle, \$5,000. Loren B. Kunkle, Virgil Keller, Nelson E. Fisher, Calvin R. Franks, John A. Huffman.

LaFayette Motors Co., Columbus, \$1,000. D. T. Keating, Earle G. Howard, W. H. Pomerene, M. J. Moore, James O. Boulger, E. C. Bauer.

Thrift Savings and Loan Co., West Park, \$1,000. William Duhm, J. P. Diederick, Nicholas Arth, C. H. Weimels, J. W. Norton, J. P. Gallagher, E. I. Gunkelman.

Central States Engineering & Construction Co., Cleveland, \$100,000. R. L. Ravitch, R. L. Gottfried, A. D. Mul-ligan, W. D. Cole, E. Loeb.

R. L. Graham Co., Lima, \$75,000. R. L. Graham, F. B. Townsend, Cleve Manuel, H. L. Gayer, George B. MacDonell.

DeWeese-Talbott Co., Dayton, \$500,000. Ralph E. DeWeese, Nelson S. Talbott, Thomas Putman, F. Howard Wright, Robert E. Cowden.

Watson Realty Co., Toledo, \$10,000. J. J. Watson, Merrill N. Pheatt, R. T. Anderson, O. C. Clement, B. Schwind,

Wooster Home Builders' Co., Wooster, \$25,000. William Harris, Max Bloomberg, Herman Freedlander, J. H. B. Danford, Alvin Rich.

Webb Development Co., Cleveland, \$1000,000. Charles B. Bayly, J. Frank Wieser, M. C. Haugh, A. L. Chlostergil, H. Rothenberg.

Toledo Clay Products Co., Toledo, \$100,000. Edward H. Rhoades, Jr., L. H. Kreke, Edna L. Livingston, Edna A. Schramm, Flora Hopkins.

Reed Rubber Co., Toledo, \$25,000. John D. Reed, Willard H. Reed, Frank Maurer, Anna Maurer, Miriam F. Koehl.

Cuyahoga Wrecking and Excavating Co., Cleveland, \$100,000. J. A. Fenner, F. W. Stanton, C. C. Young, C. L. Stocker, A. M. Loveland.

Belmont Cigar Co., Belmont, \$50,000. Allen A. Wright, Cooper E. Acton, Leroy Gregg, Herman L. McKisson, Charles C. Lynn, John W. Wright.

Cleveland Mixer and Manufacturing Co., Cleveland, \$10,000. John P. Dempsey, John J. Sturges, G. Henderson, Gertrude Follis, R. E. Kouba.

Canton Mantel and Tile Co., Canton, \$20,000. E. H. Ehman, F. W. Hurley, L. E. Alspaugh, Ada Berlin, L. A. McCally.

Superior Sheet Steel Co., Canton, \$2,000,000. H. A. Roemer, D. A. Williams, P. L. Howenstine, Thomas H. Heacock, Clarence C. Herbruck.

Lucas Electric Co., Toledo, \$25,000. Frank L. Lucas, George I. Michener, Samuel Spiro, J. Newton Riddle, H. W. Kline.

Truck Operators and Garage Co., Cleveland, \$10,000. J. A. Fenner, F. W. Stanton, C. C. Young, C. L. Stocker, A. N. Loveland.

West Park Building and Loan Co., West Park, \$250,000. M. J. Hinkel, J. M. Ragen, Arthur McBride, Mrs. A. H. Bennett, Florence Chapin.

Pickett Oil and Gas Co., Columbus, \$10,000. Willard Miller R. G. Hungate, F. J. Miller, L. A. Evans, M. Maher.

Toledo Finance Co., Toledo, \$25,000. John S. Saalsfield, M. L. Arndt, Thos. C. Farrell, G. Paul Hohly, Gertrude S. Saalsfield.

Ohio H. & W. Sales Co., Cleveland, \$50,000. G. E. Hoffman, E. V. Werk, Herman J. Nord, Margaret Fahey, Erma Da Voll.

Bancroft Farms Co., Columbus, \$50,000. Ed. T. Powell, Charles A. Pierce, John S. Bailey, Lytle W. Hunt, Harold M. Gardnier.

West Milan Light and Power Co., Milan, \$5,000. H. P. Crecelius, William Wallrabenstein, Fred W. Heckelman, Louis Schamp, W. P. Wallrabenstein, C. O. Merry, John Schamp.

Cameron Oil Co., Cincinnati, \$100,000. George P. Rutledge, Russell Errett, A. A. Andridge, F. O. Andridge, Stanley H. Kidd.

Parish-Pool Co., Cleveland, \$37,500. E. J. Williams, L. F. Curran, T. E. Lichfield, E. C. Bennet, W. H. Pumphrey.

H. B. Bixler Co., Akron, \$600,000. C. F. Schnee, John C. Grimm, Joseph Thomas, W. A. Byrider, William H. K. Rose.

Denmead Tire & Rubber Co., Akron, \$100,000. C. F. Schnee, John C. Grimm, Joseph Thomas, W. A. Byrider, William H. K. Rose.

Farmers' State Bank of Port Washington, \$26,000. W. F. Demuth, Henry Cappel, F. S. Spring, Walter Wohlend, H. W. Acker.

Banfield Improvement Co., Steubenville, \$300,000. William Banfield, H. H. Smith, H. E. Kilgus, Richard M. Mahon, E. E. Erskine.

Seeantee Realty and Investment Co., Cleveland, \$5,000. Lewis F. Hopp, M. Schlesinger, S. F. Ziegler, A. H. Luckhapt, Al. Worlen.

Valentine Bootery Co., Toledo, \$10,000. J. B. Johnson, L. D. Macher, John M. Ormond, George E. Seney, Ben L. Stephens.

Coshocton County Finance Co., Coshocton, \$70,000. George D. Klein, Carl McGimmis, J. E. Lyons, W. M. Carr, W. H. Compton.

Farmers' Savings and Loan Co., Canfield, \$50,000. Mark H. Liddle, D. Campbell, H. J. Beardsley, J. S. Harding, Harry E. Delfs.

Morzan County Farmers' Elevator Co., McConnellsville, \$20,000. A. H. Humphries, C. R. Massey, P. G. Lawrence, J. A. Hambleton, Chester S. Strong.

Folding Box Co., Cleveland, \$525,000. Alonzo M. Snyder, C. J. Davis, I. T. Thompson, Joseph W. Schack, N. I. Koung.

Sawyerwood Transportation Co., Sawyerwood, \$10,000. Carl G. Wieland, C. H. Cradlebaugh, John R. Smith, E. M. Crain, John V. Cotton.

Carniola Realty Co., Cleveland, \$100,000. John Hecevar, F. M. Wheel-
din, J. G. Reyant, Elmer W. Waite, J. A. Friend.

Czecho-Slovak Farms Co., Cleveland, \$50,000. J. H. Morris, R. B. Gamble, M. N. Johnson, Agnes Fleischer, H. M. Frantz.

Association Building Co., Cleveland, \$500. Edward C. Daoust, John H. Schultz, K. T. Siddall, I. M. McDonough, B. M. Butler.

Hyview Realty Co., Cleveland, \$25,000. Samuel Katz, Simon Nickman, Abe Garson, Louis Katz, William Trostler.

White-Downing Manufacturing Co., Cleveland, \$50,000. Wm. R. Daley, J. H. Kellogg, B. S. Brady, J. G. Bachman, H. A. Hauxhurst.

Keith Milling Co., Canton, \$50,000. Wendell Herbruck, H. Nellus, G. B. Kellogg, Frank B. Melchoir, A. R. Ackerman.

Urban Machine and Tool Co., Cleveland, \$100,000. Wm. C. Keough, M. M. Roche, B. Babeck, L. Leppla, G. D. Kay.

James Realty Co., Columbus, \$180,000. W. M. James, John A. Connor, Howard Feigley, Blanche G. Guest, Lura B. James.

Maple Dell Cream Products Co., Columbus, \$10,000. Louis M. Greenstein, J. W. Wright, Harry Greenstein, James O'Kane, Robert C. Byers.

Jiffy Coupling Mfg. Co., Cleveland; \$4000. Eva C. Lipman, M. H. Lipman, Sadie Markowitz, Mike M. Markowitz, Sol C. Jacobs.

Bell Washer and Wringer Co., Cleveland, \$37,500. A. V. Cannon, Charles F. Ross, H. M. Dwyer, Jay P. Taggart, L. A. O'Neil.

Consumers' Co-operative Co., Dayton, \$10,000. George L. Schneyer, Charles Zurmuhlen, M. Hallie McDowell, Etta Morse Espy, Clarence E. Schultz.

McAllister-Rohrer Motor Sales Co., Dayton, \$5,000. Golda C. Rohrer, Arthur D. McAllister, Margaret A. McAllister, Mac S. Rohrer, Gates C. Ob-
linger.

Crown Point Improvement Co., Dayton, \$10,000. Henry H. Hollencamp, Charles H. Hollencamp, Henry Hollencamp, Frank A. Hollencamp, Sargent D. Williamson.

Increases

Mariona Tire and Rubber Co., Marion, \$300,000 to \$750,000.

American Block and Manufacturing Co., Warren, \$60,000 to \$100,000.

Ebner Sons Co., Springfield, \$10,000 to \$50,000.

Surety Rubber Co., Columbus, \$100,000 to \$300,000.

Eclipse Supply Co., Akron, \$50,000 to \$150,000.

Bennett Milling Co., Elyria, \$200,000 to \$350,000.

Buschman Co., Cleveland, \$100,000 to \$150,000.

Clyde Cars Co., Clyde, \$500,000 to \$1,500,000.

Ocean Oil Co., Findlay, \$10,000 to \$50,000.

Hinderer Bros. Co., Canton, \$20,000 to \$100,000.

Youngstown "Bludwine" Bottling Co., Youngstown, \$10,000 to \$15,000.

Wise Furnace Co., Akron, \$150,000 to \$1,000,000.

Piqua Motor Sales Co., Piqua, \$10,000 to \$60,000.

E. Kahn's Sons Co., Cincinnati, \$75,000 to \$750,000.

Landal Tractor Co., Toledo, \$10,000 to \$20,000.

Belmont Properties Co., Cleveland, \$10,000 to \$900,000.

J. E. Christian Co., Cleveland, \$25,000 to \$50,000.

Weaver-Dunkle Co., Cleveland, \$10,000 to \$50,000.

Atlas Electric Co., Cleveland, \$100,000 to \$150,000.

Taggart-Trumbo Co., Springfield, \$20,000 to \$50,000.

Romona Chemical Co., Cleveland, \$10,000 to \$20,000.

Lilly White Oil Co., Lima, \$150,000 to \$500,000.

Cincinnati Clock & Instrument Co., Cincinnati, \$15,000 to \$50,000.

Decrease

Winters Co., Springfield, \$150,000 to \$25,000.

Buckeye Chemical Co., Akron, \$25,000 to \$5,000.

Fluhart Collieries Co., Dayton, \$75,000 to \$10,000.

E. Kahn's Sons Co., Cincinnati, \$150,000 to \$75,000.

PUBLIC UTILITIES COMMISSION

No. 1797—In the Matter of the Application of The Defiance Gas and Electric Company for Leave to Issue Certain Betterment Bonds. Prayer Granted.

(Dated October 31, 1919.)

This day this matter came on to be heard, and was heard upon the application of The Defiance Gas and Electric Company a (corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and authority of this Commission for the issue of its First Mortgage, five per cent. Bonds of the principal sum of \$407,156.14, the proceeds arising from the sale, or pledge, thereof to be used to reimburse its treasury for the sum of \$120,367.14 (not procured by the issue of stock bonds, notes or other evidences of indebtedness) expended therefrom to and including July thirty-first, 1919, for the construction of, additions, extensions and improvements to its plants and property, and to provide moneys for the construction of other facilities, the estimated cost of which is the sum of \$185,000.00, and, further, in the event of its inability to dispose of said bonds, at this time, by sale, to pledge the same as collateral security, and, with such security, to issue five-year, seven per cent. promissory notes of a principal amount equal to seventy-five per cent. of the par value of the bonds pledged as security therefor:

Upon consideration whereof, and being fully advised in the premises, the Commission finds:

(1) That within the period of five years next preceding the filing of the application herein and to and including the thirtyfirst day of July, 1919, the applicant had actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$120,367.14 none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness;

(2) That the applicant now has in contemplation the provision and construction of certain additions, extensions and improvements to its plant and facilities, the cost of which has been estimated at the sum of \$185,000.00.

(3) That the issue of applicant's said bonds is reasonably required and the money to be procured thereby necessary for the reimbursement of its treasury for the aforesaid uncapital-

ized capital expenditures therefrom, and to provide the aforesaid additions, extensions and improvements to its property.

(4) That under the conditions now existing in the financial markets and surrounding the sale of securities, it will be exceedingly difficult to dispose of applicant's said bonds upon a reasonable basis and that, to procure the moneys required by the applicant as aforesaid, the issue of notes, secured by the deposit of said bonds as collateral security, is reasonably required and the moneys to be procured thereby necessary, as aforesaid, for the immediate requirements of the applicant.

(5) That, the applicant now having bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue of said bonds and notes in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds of such excess of bonds and notes should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said bonds and notes should be granted, it is, therefor

Ordered, That said The Defiance Gas and Electric Company be, and hereby it is authorized to issue its First Mortgage, five per cent. bonds of the principal sum of four hundred and seven thousand, one hundred and fifty-six dollars and fourteen cents (\$407,158.14), and that said bonds be sold for the highest prices obtainable but not less than seventy-five (75) percentum of the par value thereof. It is further

Ordered, That, pending the sale of said bonds, the same may be pledged as collateral security for loans, which loans shall be of the greatest sums negotiable but in no event less than seventy-five percentum of the par value of the bonds so pledged. It is further

Ordered, That, to consummate such pledge of said bonds, said The Defiance Gas and Electric Company be, and hereby it is authorized to issue its five (5) year, seven per cent. promissory notes (secured by a deposit of the aforesaid bonds as collateral security) of not to exceed seventy-five percentum of the par value of the bonds so deposited as collateral security therefor, and to sell the same for the highest prices obtainable but for not less than ninety-two and one-half percentum of the par value of said notes. It is further

Ordered, That any discount arising from the sale of said bonds or notes be amortized pursuant to the rule and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of bonds or notes be devoted to and used for the following purposes, and no others, to-wit:

(a) The reimbursement of applicant's treasury for the sum of \$120,367.14, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, to and including July thirtyfirst, 1919, for the construction, completion, extension and improvement of its facilities.

(b) The provision of certain additions, extensions and improvements to its facilities, as more fully described in the evidence offered upon the hearing hereof and the exhibits filed herein, the estimated cost of which is the sum of \$185,000.00. It is further

Ordered, That the issue of the aforesaid bonds and notes in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as hereinbefore prescribed, be and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the applicant make verified report to this Commission, semi-annually within fifteen days after the close of each calendar semi-annually period, of the issue and disposition of said bonds and notes and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1791—In the Matter of the Application of the Pere Marquette Railway Company for Consent and Authority to Issue and Dispose of \$1,568,000.00 Series A, First Mortgage, Five Per Cent. Gold Bonds. Prayer Granted.

(Dated October 31, 1919.)

This day this matter came on for consideration upon the application of the Pere Marquette Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Michigan and the owner and operator of a line of railway largely within said state but partly within the State of Ohio), asking the consent and authority of this Commission to issue and sell, or pledge pending such sale, First Mortgage Series A, five per cent. Gold Bonds, due July 1, 1956, of the principal sum of \$1,658,000.00, the proceeds arising from the sale thereof, or secured by a pledge

of said bonds, to be applied toward the reimbursement of applicant's treasury for eighty percentum of the sum of \$1,960,925.67, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, within the six months ended December thirty-first, 1918, for net addition and betterments to its property:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds, from the pleadings and exhibits filed herein and for the purpose of this proceeding, that, within the period of six months ended December thirty-first, 1918, the applicant expended from its treasury for the construction, completion, extension, and improvement of its facilities, the sum \$1,960,925.67, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said bonds, of the principal sum of \$1, 568,000.00 is reasonably required and the money to be procured thereby necessary for the partial reimbursement of applicant's treasury for the aforesaid uncapitalized capital expenditures, and is satisfied that consent and authority for the issue and disposition of said bonds should be granted.

And it appearing further, that of the entire property of the applicant, substantially 0.435403 percentum thereof is located and situated within the borders of the State of Ohio; that of the said expenditures of \$1,960,925.67 aforesaid, not to exceed the sum of \$1,100.00 was spent for additions and betterments to applicant's railway property in the State of Ohio, (exclusive of equipment operated in said State from time to time), and that The Michigan Public Utilities Commission having duly examined said account and satisfied itself of the correctness thereof, by order, made and entered as of date September twenty-ninth, 1919, in its proceeding numbered D-1037, has, pursuant to the law in such case made and provided, duly consented to and authorized the issue and disposition of the aforesaid bonds by the said Pere Marquette Railway Company, without prescribing a minimum sale price therefore, but subject to the provision that, "none of said bonds to be sold or pledged by said company until the terms of any proposed sale or pledge of said bonds have been reported in detail to and approved by this commission," this Commission further, finds, taking into

consideration the conditions now obtaining in the financial markets and surrounding the sale of securities, that said bonds should be issued and disposed of upon the terms and subject to the conditions which may hereafter be approved by said The Michigan Public Utilities Commission. It is, therefore

Ordered, That the said Pere Marquette Railway Company be, and hereby it is authorized to issue its First Mortgage, Series A, five per cent. gold bonds of the principal sum of one million, five hundred and sixty-eight thousand dollars (\$1,568,000.00) in so far as it is necessary to secure the approval of this Commission. It is further

Ordered, That said bonds, when issued, be sold, or pledged, as may be elected by the directors of said corporation, to the best advantage and at and upon such terms as may pursuant to its order so made and entered in the premises, be approved by said The Michigan Public Utilities Commission. It is further

Ordered, That the proceeds arising for the sale, or secured by the pledge of said bonds be used for the reimbursement of applicant's treasury for eighty per centum of the sum of \$1,960,925.67, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction, completion, extension and improvement of its facilities within the six months ended December thirty-first, 1918, and for no other purpose whatsoever. It is further

Ordered, That, if upon further investigation or inquiry by this Commission, it develops that any of said sum of \$1,960,925.67 was not so expended within said period, an equivalent amount of the proceeds of said bonds shall be applied toward the payment for other net capital additions to applicant's facilities and property. It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each semi-annual calendar period of the issue and disposition of bonds under and pursuant to the terms and conditions of this order, verifying the approval of such issue by a copy of the formal approval thereof by said The Michigan Public Utilities Commission and designating the disposition of the proceeds of the sale, or loans procured by the pledge of said bonds. It is further

Ordered, That any discount arising from the sale of said bonds for less than a par value thereof be amortized pursuant to the rules and regulations heretofore prescribed by this Commission.

No. 1781—In the Matter of the Contract Entered Into Between The Central Power Company and The Timken Roller Bearing Company, Dated July 1, 1919, for the Use of a Portion of the Capacity of the Transmission Line of The Central Power Company, Extending from Windsor, West Virginia, to Canton, Ohio, and a Portion of the Capacity of the Substation at Canton, Ohio. Prayer Granted.

(Dated October 21, 1919.)

This day came The Central Power Company and filed with the commission a copy of a certain contract entered into by it with The Timken Roller Bearing Company on July first, 1919, by the terms of which the said Central Power Company leases to The Timken Roller Bearing Company the use of a certain portion of the capacity of its certain transmission line, extending from Windsor, West Virginia, to Canton, Ohio, and also the use of a certain portion of the capacity of its substation at Canton, Ohio, and distributing circuit from the substation to the Timken plant in the City of Canton, Ohio, and also came The Timken Roller Bearing Company, by its duly authorized representatives; and the commission finds from the evidence and statements of counsel, and from its records that The Central Power Company is the owner of an electric generating station located at Windsor, West Virginia, and is also the owner of a pole line for the transmission of electric energy from said generating station to its distributing station at Canton, Ohio.

It also further appears that The Timken Roller Bearing Company, in lieu of the construction of an electric power plant and transmission line, to be operated by itself for its purposes, has heretofore acquired an interest in the Windsor station, and in the energy produced therefrom, and that to transmit such energy for its uses in Canton, Ohio, it entered into the transmission contract with The Central Power Company first above referred to.

After careful examination of said contract, and being fully advised as to all the circumstances and conditions relating thereto, the commission finds that as to the power plant located in Windsor, West Virginia, and the interests and rights acquired by The Timken Roller Bearing Company therein, it has no jurisdiction, and further has no jurisdiction over that portion of the transmission line of The Central Power Company, extending from the Windsor power plant in West Virginia to the southern line of the state of Ohio; that in so far as said transmission contract covers the said transmission

line and appurtenances thereto lying within the state of Ohio, and the substation and distribution line in Canton, Ohio, the same is found to be fair and equitable, and in the interest of The Central Power Company and the public, and that in so far as this commission has jurisdiction and authority so to do, such contract should be approved. It is, therefore,

Ordered, That said transmission contract, heretofore, on July first, 1919, entered into by and between The Central Power Company, as party of the first part, and The Timken Roller Bearing Company, as party of the second part, to the full extent of the jurisdiction and authority of this commission, be, and the same hereby is, in all respects, and as to all its terms and provisions, authorized and approved.

✽

No. 1652—In the Matter of the Application of The Union Savings Bank and Trust Company, as Trustee for the First Mortgage Note Holders of The Cincinnati and Columbus Traction Company, to Permanently Abandon and Discontinue the Service and Operation of said Company and to Dismantle its Railroad by Removing the Rails, Ties, Poles, Wires, Overhead Construction and All Other Property and Disposing of the Same, Including Sub-stations, Real Estate, Buildings, Machinery and Rolling Stock. Application Denied.

(Dated October 31, 1919.)

The Union Savings Bank and Trust Company, of Cincinnati, Ohio, as trustee for the first mortgage note holders of The Cincinnati and Columbus Traction Company (a corporation which had owned and, until the time the same was placed in the hands of a receiver, operated a line of electric interurban railroad extending from the city of Norwood, Ohio, to the village of Hillsboro, Ohio,) the property, roadbeds, rights-of-way, fixtures, franchises and other assets of The Cincinnati and Columbus Traction Company, which were acquired, at judicial sale, by said The Union Savings Bank and Trust Company, as trustee for the said first mortgage note holders of said The Cincinnati and Columbus Traction Company, having, on the seventeenth day of April, 1919, filed with this commission its petition, as such trustee, alleging among other things that it was the owner of an Interurban Railroad, including all its franchises, rights-of-way, contracts, roadbed, rails, ties, poles, pole line, tracks, sidings, passenger cars, freight cars, real estate, buildings,

power houses, sub-stations, trestles, bridges, culverts and all property, both real and personal, of every kind and description and wherever the same may be situated, and operating the same, and praying for authority to permanently abandon and discontinue the service and operation of said Interurban Railroad and to dismantle its said railroad by removing the rails, ties, poles, wires, overhead construction and all other property, and disposing of the same, including sub-stations, real estate, buildings, machinery and rolling stock, which said matter was thereafter heard, pursuant to law, and this commission, in determination of the matters and things therein at issue, upon the twenty-eighth day of August, 1919, made and entered its findings and order herein authorizing said The Union Savings Bank and Trust Company, as trustee as aforesaid, to discontinue the service and abandon the railroad track, wires and other railroad facilities, of said property between the village of Owensville and the village of Hillsboro, Ohio, and denying its prayer as to the remainder thereof.

Whereupon said The Union Savings Bank and Trust Company, as trustee for the owners of said railroad, theretofore the property of said The Cincinnati and Columbus Traction Company, notified the commission in writing on the twenty-eighth day of October, 1919, of its intention and purpose, notwithstanding said order, to discontinue the operation of said property in toto.

Upon consideration whereof and being fully advised in the premises, the commission finds, from the record heretofore made herein and its subsequent investigation and inquiry in the premises, that a discontinuance of said operation is not warranted by the facts or in law. It is, therefore,

Ordered, That said The Union Savings Bank and Trust Company, as trustee for the owners of the franchise, rights-of-way, contracts, roadbed, rails, ties, poles, pole line, tracks, sidings, passenger cars, freight cars, real estate, buildings, power house, sub-stations, trestles, bridges, culverts and all property, both real and personal, of every kind and description and wherever the same may be situated, heretofore of The Cincinnati and Columbus Traction Company; be, and hereby it is notified, directed and required to continue the operation of the electric interurban railway of said property between the city of Norwood and the village of Owensville, Ohio, and the operation of the electric light and power business of said property throughout its original installation, until further order of this commission.

No. 1786—In the Matter of the Application of the Garrett Electric Light and Power Company, Owned Individually by C. O. Garrett, for Authority to Issue Its Promissory Note for \$6,000.00. Prayer Granted.

(Dated October 23, 1919.)

This day this matter came on for consideration upon the application of the Garrett Electric Light and Power Company, an unincorporated public utility owned individually by one C. O. Garrett, asking the consent and authority of this commission to make and issue a certain promissory note, bearing interest at the rate of six percentum per annum, and to be paid in eighty monthly installments, of the total principal sum of \$6,000.00, the money to be procured thereby to be used to pay and discharge certain indebtedness heretofore incurred by the applicant for and on account of the provision of additions, extensions and improvements to its facilities, and to pay for certain other additions, extensions and improvements to its facilities, the total cost of which (including said indebtedness) is the sum of \$6,006.00:

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the applicant has incurred and will incur a total indebtedness of not less than the sum of \$6,006.00 for and on account of the provision of additions, extensions and improvements to its facilities, and that the making and issuing of said note and the money to be procured thereby are reasonably required and necessary for the payment and discharge or refunding of the aforesaid indebtedness, and is satisfied that consent and authority for the making and issuing of said note should be granted. It is, therefore,

Ordered, That the said Garrett Electric Light and Power Company, owned individually by C. O. Garrett, be, and hereby it is authorized to make and issue a promissory note, of the total principal sum of six thousand dollars (\$6,000.00), to bear interest at the rate of six percentum per annum, and to be payable in eighty monthly installments. It is further

Ordered, That said note be issued as evidence of a loan or sold

for not less than the principal sum of said note, and that the moneys procured thereby be applied toward the payment of not less than \$6,000.00 of applicant's indebtedness heretofore incurred and hereafter to be incurred in the acquisition of the several additions, extensions and improvements to its facilities set forth in the detailed statement, marked Exhibit "A" appended to the application herein, which exhibit hereby is made a part of this order by reference, and used for no other purpose whatever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said note and the expenditure of the loan procured, or the proceeds derived from the sale thereof, pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

A Favorable Vote of the Electors at the Election in November 1919, Under Sections 6926-1 et seq., General Code, Will be Effective With Respect to the Duplicate Upon Which Collections Are to be Made in December 1919, and June 1920.—The Fact That no Levy Has Been Made Under Section 6926 General Code, for the Year 1919, Does Not Prevent Action Under Authority of a Vote of the People by Virtue of Sections 6926-1 et seq., General Code. Action Previously Taken Under Section 6926 General Code, May be Rescinded Under Authority of a Vote of the People Effective in the Year 1919, and Taken Under Sections 6926-1 et seq., General Code, so That the Rate Levied Subject to the Limitations of the Former Section May be Expunged and a New Rate Levied Outside of the Limitations of That Section Substituted Therefor.—The Essence of the Vote of the Electors is to Exempt a Levy For a Purpose Authorized by Section 6926 General Code, From the Limitations of the Smith Law. Although Section 6926-3 General Code, Speaks of Authority to Levy the Tax Springing From a Favorable Vote of the Electors, Such Tax is not in Addition to Other Taxes That May be Levied Under Section 6926 General Code, But Must Take the Place of and be a Substitute For Levies Under Said Latter Section.—Where the Favorable Vote of the Electors May be Acted Upon so as to Affect the Current Duplicate the Budget Commission Must Reconvene and Make a New Adjustment of Levies Throughout the County, in Each Instance in Which a Levy Has Already Been Made Under Section 6926 General Code, And Allowed by the Budget Commission. A Number of Examples are Stated in the Opinion Where the Above May Not be Necessary.

No. 761—(Opinion Dated November 7, 1919.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: I acknowledge the receipt of your letter of recent date requesting the opinion of this department on the following questions:

“The Commission is advised that in a large number of the counties of the state the county commissioners have taken the necessary action under Section 6926-1 as enacted

by H. B. No. 162 passed may May 27, 1919, to submit to the electors of the county at the election to be held November 4, 1919, the question of exempting from all tax limitations all or part of the 2 mill levy provided for by Section 6926 G. C. Your opinion is respectfully requested upon the following questions in connection therewith:

If the proposition is carried in any county—

1. Will the exemption be effective for the year 1919?
2. In the event that no levy has been made under Section 6926 for the year 1919 may one be made? If so, by what board or authority.
3. If a levy has been made under Section 6926 for the year 1919 may it be increased to the amount stated in the resolution and the other levies in any taxing districts in the county be adjusted to conform to the exemption of this levy from all limitations? If so, by what board and authority."

The following sections of the General Code, now in force, require quotation in this connection:

Section 6926:

" * * * For the purpose of providing by taxation a fund for the payment of the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, improving, maintaining, and repairing roads under the provisions of this chapter, the county commissioners are hereby authorized to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county. Said levy shall be in addition to all other levies authorized by law for county purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force."

Section 6926-1:

"The county commissioners of any county may, and upon the petition of qualified electors of the county in a number equal to at least five per cent of the number of votes cast therein at the last preceding general election of state and county officers, shall by resolution submit to the electors of such county at the first ensuing November election that occurs more than forty days after the adoption of such resolution, the question of exempting from all tax limitations the levy of two mills provided by Section 6926 of the General Code * * * or the question of so exempting a part of such levy, such exemption to continue for a definite term of years not exceeding ten. When such a question is submitted upon the petition of electors, such petition shall state the portion of the levy to be so exempted and the number of years during which such exemption shall continue, and these matters set forth in the

petition shall also be set forth in like manner in the resolution adopted by the county commissioners pursuant thereto * * *. The board of county commissioners, upon the adoption of such resolution by a majority vote of all members elected or appointed thereto, shall cause a copy of such resolution to be certified to the deputy state supervisors and inspectors or the deputy state supervisors of elections of the proper county."

Section 6926-2:

"Such proposition shall be submitted to the electors of such county at the first ensuing November election that occurs more than forty days after the adoption of such resolution.
* * * .

The form of the ballots cast at such elections shall be:

'For an additional levy of taxes for the purpose of constructing, reconstructing, maintaining and repairing county roads not to exceed mills, for not to exceed years.
Yes.'

'For an additional levy of taxes for the purpose of constructing, reconstructing, maintaining and repairing county roads not exceeding mills, for not to exceed years.
No.' "

Section 6926-3:

"The ballots shall be marked as is provided by the law with reference to other ballots and the result of such election shall be certified by the deputy state supervisors and inspectors or the deputy state supervisor of elections to the county commissioners at such county. If a majority of the electors voting thereon at such election vote in favor of such levy or levies, it shall be lawful to levy taxes within such county at a rate not to exceed such increased rate for and during the period provided for in such resolution, such taxes to be in addition to such other taxes for the same purposes as may be levied subject to any limitations prescribed by law upon the combined maximum rate for all taxes, and the taxes so levied pursuant to such vote of the electors shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws."

The sections have not been quoted in full, but it may be said of the last three of them that they bear a striking resemblance in language and practical effect to sections 5649-5, 5649-5a and 5649-5b G. C., part of the Smith one per cent. law, so-called. Both sets of statutes provide for the submission of a proposition affecting

tax rates and limitations at the November election. It is reasonable to suppose therefore that the general assembly when it enacted sections 6926-1 et seq. G. C. intended that the same effect should be given to such new legislation as had been practically given to the similar provisions of the Smith one per cent. law.

The questions submitted might be easily answered by saying that no action could in practice be taken at a November election to affect tax rates for the ensuing year, inasmuch as at that time the budget commissions have completed their work and the rates of other subdivisions levying within the districts affected by the vote have been adjusted by the commission to the levies of such district, on the theory that they were subject to one or more of the limitations of the Smith law; also because in November the duplicate is supposed to be in the possession of the county treasurer for the collection of taxes thereon.

These considerations are, however, in a measure at least practical rather than strictly legal. The same objections might be raised against giving effect to a vote under section 5649-5 G. C. in the year in which the vote is taken. It is believed, however, that the practical interpretation which has been given to the Smith Law is contrary to the view suggested by the above objections. In other words, in numerous instances additional levies have been voted under sections 5649-5 et seq. G. C. and placed on the duplicate after election and before the time for the collection of taxes, although, as will be hereinafter pointed out, such action has, in certain instances, required the reconvening of the budget commission.

This department is not in possession of the exact facts with respect to the statement just made. The Commission, it is believed, is aware of the situation. However, a general impression to that effect obtains, and it is believed that we must take it that the general assembly shared that impression and intended in so closely following section 5649-5b to make a law which would have the same practical effect so far as that feature of the question is concerned.

For this reason, then, it is the opinion of this department that a favorable vote of the electors under sections 6926-1 et seq. G. C. will be effective with respect to the duplicate upon which collections are to be made in December, 1919 and June, 1920. This statement is a categorical answer to your first question, though perhaps not a complete one.

In answer to your second question it may be said to be the opinion of this department that the fact that no levy has been made under section 6926 for the year 1919 does not prevent action under authority of a vote of the people by virtue of sections 6926-1 et seq. This answer is dictated by the principle just laid down.

Similarly, your third question must be partially answered by the statement that action previously taken under section 6926 may be rescinded under authority of a vote of the people effective in the year 1919 and taken under sections 6926-1 et seq., so that the rate levied subject to the limitations of the former section may be expunged and a new rate, levied outside of the limitations of that section, substituted therefor.

Coming now to some of the important collateral questions suggested by your inquiries in general, and indeed submitted in your third question, the following observations should be made:

In the first place, the essence of the vote is after all, as stated in section 6926-1, to exempt a levy for a purpose authorized by section 6926 G. C. from the limitations of the Smith law. Although section 6926-3 speaks of authority to levy the tax springing from a favorable vote of the electors, such tax is not in addition to other taxes that may be levied under section 6926 but must take the place of and be a substitute for levies under section 6926. Putting it in another way: when the people have authorized by their vote a levy under section 6926-3, the making of any levy referable to that authority destroys any authority to levy under section 6926 itself. This last way of putting the case is not strictly accurate, but is intended to convey a clear impression of the practical result of the operation of the statute.

In the second place, the conclusion that the favorable vote of the electors may be acted upon so as to affect the current duplicate makes it necessary to hold that the budget commission must reconvene and make a new adjustment of levies throughout the county, in each instance in which a levy has already been made under section 6926 and allowed by the budget commission. For it having also been held that the effect of the exemption vote being to substitute the exempted levy for the one made subject to the limitations, or to take that levy out of the operation of the limitations, it is clear that the result must be that levying power equivalent to the amount of the levy under section 6926 as fixed by the budget commission may and most probably will be released by such

exemption. It is true that this will not necessarily be the case in every instance. For example, no levy may have been made under section 6926 as suggested in your second question. In this event no action by the budget commission will be necessary. The county commissioners can make the levy at the rate authorized by the vote and certify their action to the county auditor, who will merely place the levy on the duplicate, without more.

Again, it is a fact not to be overlooked that the levy under section 6926 is subject only to the fifteen mill limit. It is logically possible, though not very probable, that there may be no taxing district in the county in which the release of levying power subject only to the fifteen mill limit will in anywise affect the adjustments made, the levies reduced having been those subject to the ten mill limit. Here is another case in which it is at least theoretically possible that no adjustment of levies will be required.

In the great majority of instances, however, it is supposed that the release of levying power will be such as to leave one or more taxing districts in the county with smaller tax levies than they are strictly entitled to with the road levy exempted. If these districts should insist upon it, it would certainly be the duty of the budget commission, if reconvened, to make a readjustment in such manner as to afford to them the full revenues to which they are entitled after the exemption of the county road levy.

In some instances it might be that the effect of the release of the levying power would be negligible and there would be no demand for such a readjustment. Wherever there is one, however, it should be met.

Opposed to the conclusions of this opinion is the provision of section 5637 G. C., to the general effect that the county commissioners shall levy taxes at their June session. If this provision and the provisions of section 5649-3a G. C. be given full effect, the June session of the county commissioners is the only time at which the act of levying taxes may be done. The practical interpretation of sections 5649-5 et seq., however, is to the contrary, and it is upon that practical interpretation, together with the similarity which exists between those sections and the ones immediately under consideration in this opinion, that the conclusions of this opinion are based.

The Payment Made to a Survivor of Two or More Joint Depositors by a Building and Loan Association, is Perfectly Valid as Between the Association, the Payee and the Personal Representatives of the Survivors—Indeed, as Among All Private Parties Concerned, by Virtue of Section 9648 General Code. If the Entire Amount of the Deposit is Paid Out on the Order of the Survivor or Survivors Without the Consent of the Tax Commission and Without the Retention of a Sufficient Amount to Pay the Taxes Due on Account of the Succession, the Only Result Will be to Render the Building and Loan Association Liable for the Amount of Taxes That Should Have Been Paid on That Behalf, Which Liability Can Be Enforced Only In An Action Brought By the County Treasurer in the Name of the State.

No. 684—(Opinion Dated October 11, 1919.)

Hon. Frank F. McGuire, Inspector, Building & Loan Associations,
Columbus, Ohio.

Dear Sir: I have your letter of recent date requesting the opinion of this department "as to the status of stockholders in building and loan associations on joint and survivorship accounts" and also as to the duties and liabilities of building and loan associations in so far as they may be affected by the inheritance tax law which become effective June 5, 1919.

In this connection you refer to "the provisions of the building and loan laws relating to joint accounts, i. e., G. C. 9648," and you ask "to what extent the powers therein granted are restricted by the new law."

Section 9648 G. C. provides in part that:

"When such deposits or stock deposits are made to the joint account of two or more persons, whether adults or minors, with a joint order to the corporation that such deposits or any part thereof are to be payable on the order of any one or more of such joint depositors, and to continue to be so payable notwithstanding the death or incapacity of one or more of the persons making them, such account shall be payable to any one or more of such survivors or survivor or order notwithstanding such death or incapacity. No recovery shall be had against such corporation for amounts so paid and charged to such account."

The inheritance tax law contains the following provision:

"Sec. 5348-2. No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new

certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the tax commission of Ohio. No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank or other institution, shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the tax commission of Ohio may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons, from the obligation to give such notice or to retain such portion. The tax commission or the county auditor, personally or by representatives, may examine such securities, deposits or other assets at the time of such delivery or otherwise. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession to such securities, deposits, assets or property. Such liability may be enforced by action brought by the county treasurer in the name of the state in any court of competent jurisdiction."

The first sentence of section 5348-2 G. C. has no application to the question submitted by you, because it relates to transfer of shares of stock or the issuance of new shares.

Section 9648 G. C. relates to the payment of deposits or stock deposits. Its provision is that joint account deposits or stock deposits shall "continue to be so payable (on the order of any one or more of such joint depositors) notwithstanding the death or incapacity of one or more of the persons making them;" and it is further provided that "such account shall be payable to any one

or more of such survivors or survivor or order notwithstanding such death or incapacity." It is further provided that: "No recovery shall be had against such corporation for amounts so paid and charged to such account."

So far from repealing or limiting the general effect of these provisions, section 5348-2 G. C. assumes that joint accounts payable to the survivor or his order are legal. In fact section 5348-2 must be read in connection with paragraph 5 of section 5332. This is the section which imposes the inheritance tax upon various forms of what are called "successions" and it is as follows:

"Sec. 5332. * *

5. Whenever property is held by two or more persons jointly, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right by the death of one of them shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the enhanced value of the whole property belonged absolutely to the deceased person, and had been by him bequeathed to the survivor or survivors by will.

* * "

Under section 9648 G. C., upon the death of one of the joint depositors "the survivor or survivors" would "have a right to the immediate ownership or possession and enjoyment of the whole property" (deposit). In other words, section 9648 G. C. expressly authorizes joint deposits payable to the survivor, and prevents the ownership of an undivided half interest in the fund from vesting in the personal representatives of the decedent. That is to say, the section establishes a true joint ownership with the incident of survivorship in the whole. And the enhancement of value thus accruing to the survivor or survivors is taxed as a "succession" by the inheritance tax law, not on the theory that it is illegal or to be penalized—because the inheritance tax law is not enacted on that theory at all—but merely as an excise tax upon the enjoyment of a privilege which is conceded to be lawful and consistent with public policy.

There is, therefore, nothing fundamentally inconsistent between the law allowing joint accounts and the law taxing the accrual of additional rights of survivors by the death of one of the joint depositors. The one makes such accrual lawful; the other taxes it.

Section 5348-2 G. C. is merely a means of collecting the tax in such cases. It imposes no absolute limitation on the right of the

building and loan association to act under section 9648 G. C. It merely provides that if the institution permits the survivor to draw out the joint account without retaining a sufficient sum to pay the tax payable on account of such joint account, (not the whole tax on the general estate of the decedent) the institution shall lay itself liable to a penalty recoverable in a civil action brought by the county treasurer, the penalty being the amount of the taxes due on account of the "succession" arising by virtue of the accrual of such right of survivorship.

Possibly, in an action to recover such amount, good faith and want of knowledge of the fact of death would be matters of defense. No opinion is expressed on this point.

It is at least clear that if a building and loan association has notice of the death of one of two or more joint depositors, however informally such notice may have been acquired, and with such notice pays out the entire deposit to the survivor or survivors, without the consent of the Tax Commission and without retaining a sufficient sum to pay the taxes, it would thereby render itself liable for such taxes as might be due, considering the amount of the deposit and its enhancement in value to the survivor and the relationship of the survivor to the decedent, and in an action to recover such taxes it would be without any defense as against the suit of the county treasurer.

This liability does not in anywise impair the validity of the payment made by the building and loan association. Section 5348-2 G. C. contains a prohibition, to be sure, but it also stipulates exactly what shall be the consequences of violation of this prohibition. Therefore, the second sentence of the section is not to be taken as an implied amendment of section 9648 G. C., making invalid, as between the parties, what may have been done under the latter section when one of the joint depositors has died, but merely as a regulation, designed as it is to insure the collection of the public revenues.

In conclusion then, it is the opinion of this department that a payment made to a survivor of two or more joint depositors by a building and loan association is perfectly valid as between the association, the payee and the personal representatives of the survivor—indeed, as among all private parties concerned, by virtue of Section 9648 G. C.; and that if the entire amount of the deposit is paid out on the order of the survivor or survivors, without the consent of the tax commission and without the retention of a sufficient amount to pay the taxes due on account of the succession, the only result will

be to render the building and loan association liable for the amount of taxes that should have been paid on that behalf, which liability can be enforced only in an action brought by the county treasurer in the name of the state. Whether in such an action good faith and want of knowledge of the death of the decedent would be a defense to the building and loan association is a question which is suggested but not decided at this time. It follows that what you describe as "the status of stockholders in building and loan associations on joint and survivorship accounts" is not affected at all by the inheritance tax law; that the powers granted in section 9648 G. C. are not in anywise restricted as powers by that law; but that building and loan associations have certain duties to perform in connection with the inheritance tax law, failure to discharge which will subject them to liabilities thereunder.

✽

Sections 13320 and 13321 General Code, are Held Applicable to Contributions by Corporations in Business in This State for the Purpose of Promoting or Defeating at the Polls the Proposed Tax Classification Amendment to the State Constitution. In the Absence of Judicial Decision or Other Decisive Considerations to the Contrary, the Previous Ruling of this Department is Approved and Followed. A Committee or Combination of Two or More Persons Co-operating to Aid in or Promote the Success or Defeat of any Proposition Submitted to a Vote at any Election Required Under the Law to Make Report of Receipts and Expenditures Unless Clearly Shown to be Within Exempted Class in Section 5175-1 General Code.

No. 754—(Opinion Oated November 1, 1919.)

Hon. Hugo N. Schlesinger, Prosecuting Attorney, Columbus, Ohio.

Dear Sir: Your letter of recent date submitting for my consideration the matter of contributions by corporations engaged in business in this state for the purpose of promoting or defeating at the polls the proposed tax classification amendment to the State Constitution, has been duly received.

The public policy of this state on the subject of contributions by corporations for political purposes is disclosed by sections 5522, 8729, 8730, 13320 and 13321 G. C., the latter two of which sections are penal in character.

Section 13329 provides:

"Whoever, being a corporation in business in this state,

directly or indirectly, pays, uses, offers, or consents or agrees to pay or use money or property for, or in aid of a political party, committee or organization, or for or in aid of a candidate for political office, or for a nomination thereto, or uses money or property for any political purpose whatever, or for the reimbursement or indemnification of any person or persons for money or property so used, shall be fined not less than five hundred dollars nor more than five thousand dollars."

Section 13321 provides a penalty applicable to an officer, stockholder, attorney or agent of a corporation participating in, aiding or advising the violation of the preceding section.

On July 17, 1917, my predecessor ruled that the making of contributions by a corporation for the purpose of affecting the result of what are commonly referred to as "Wet" and "Dry" elections is prohibited by the statutes under consideration. This ruling was directed to Hon. C. Ellis Moore, Prosecuting Attorney, Cambridge, Ohio, and is herewith set forth in full, as follows:

"Sometime ago you inquired of this office whether or not a corporation as such could make a contribution to the organization known as the Ohio Dry Federation which is organized for the purpose of promoting the cause of statewide prohibition in Ohio. Answering your inquiry it is my opinion under the provisions of section 13320 of the General Code, a corporation doing business in Ohio can not legally contribute money of the corporation, either directly or indirectly to affect the result of what are known as wet and dry elections. As one authority supporting the proposition, I cite the case of *People vs. Gainsley*, 158 Northwestern Report, 195. I also call your attention to the title of the Act, of which Section 13320 General Code is a part. You will note from this title that there are two different provisions, one to prevent the corruption of elections, and the other to prevent the corruption of political parties."

The question is not free from doubt and has been the subject of much controversy subsequent to the ruling of the Attorney General to which reference is made. The conclusion there reached has not been disappointed by any court and in view of the manifest purpose of the law I see no sufficient reason suggesting a departure from the former ruling until there be a judicial determination to the contrary.

Your second question is as follows:

"Must a report on the receipts and expenditures of all money used by any committee or organization for the purpose of defeating or supporting said amendment be filed with the Secretary of State under the provisions of the corrupt practice law of Ohio?"

A reading of the provision of sections G. C. 5175-1 to 5175-6 inclusive at once leads to this conclusion: that a committee or combination of two or more persons, which is co-operating to aid in or promote the success or defeat of any proposition submitted to a vote at any election and is soliciting money or has solicited and received money to be used in its activities in connection with the election at which the proposition is submitted, is required to file a statement of its receipts and expenditures with the Secretary of State within ten days following the election. The requirement would not be applicable to a "committee or organization for the discussion or advancement of political or economic questions" as is apparent from the exception in section 5175-1. There is nothing before this office which tends to show that the committee or organization to which you have referred is within the exempted class. That point is one to be determined from various tests and amounts to a question of fact to be passed upon by the court in case complaint is made that the provisions of the corrupt practices act have been violated. The mode of procedure if course is provided in sections 5175-74 et seq.

It is my opinion that a report of the receipts and expenditures of any such committee or organization referred to above should be made as provided by law, unless it is made clearly to appear that it comes within the exempted class referred to in section 5175-1 G. C.

3

Where a Corporation Redeems and Retires an Issue of Preferred Stock Through the Agency of a Trust Company, Such Transaction Where Payments are Made to the Representatives of a Deceased Person, Would Not Be a Transaction Which Would Require the Giving of Notice to the Tax Commission and its Consent in Writing Thereto, in Order to Avoid the Liability of the Trust Company for Inheritance Taxes.

No. 765—(Opinion Dated November 8, 1919.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: I acknowledge the receipt of your letter of recent date quoting the following communication to the Commission on the part of The Goodyear Tire & Rubber Company:

"The Goodyear Tire and Rubber Company of this city is redeeming an issue of preferred stock, the redemption to be made on November 1st of this year.

The Ohio Savings & Trust Company, also of this city (Akron) is acting for The Goodyear Tire and Rubber Company in the redemption of this preferred stock. The certificates of stock will be, when presented to The Ohio Savings and Trust Company, redeemed by the payment of money therefor. Some of the certificates of preferred stock will be in the hands of the representatives of deceased persons, and inquiry is therefore made as to whether The Ohio Savings and Trust Company may safely pay to the representatives of the deceased, the money represented by the stock certificate.

The inquiry, of course, arises out of Section No. 5348-2, General Code, being a part of the new Inheritance Tax Law.

The Trust Company is of the opinion that this transaction does not constitute a delivery of assets or property belonging to the decedent, but that it is a conversion by the representatives of the deceased of an asset of the deceased into another form. We request, therefore, that you inform us at your very earliest convenience as to whether or not the Trust Company may accept the certificates of stock presented by representatives of deceased persons, and pay them the redemption price therefor, or whether the Trust Company must retain from the redemption price, a sufficient amount to pay the inheritance tax.

It is further requested that if it be the holding of your commission that such tax must be retained under the law, you give to The Ohio Savings & Trust Company consent to pay to the representatives of deceased persons, the redemption price for the preferred stock to be redeemed by the Trust Company, the consent of your department being authorized by the provision of Section No. 5348-2

You request the advice of this department as to the proper procedure and as to the duties imposed on The Ohio Savings & Trust Company by the section of the inheritance tax law to which reference is made.

The letter quoted above is susceptible to two interpretations with respect to the nature of the arrangement between the trust company and the corporation. Under one of such possible interpretations the trust company would have a general deposit of the corporation commingled with its other assets, and would have agreed merely as agent of the corporation to redeem the stock in question and charge the account of the corporation with the payments thus made. Under the other interpretation the trust company would be the depository of a special fund, set apart by the corporation out of its assets for the specific purpose of retiring this stock.

In the one case the relation between the trust company and the corporation would be purely that of debtor and creditor as to the moneys on deposit, and of great agent and principal as to the duty to retire the stock. There would be no trust in the technical sense of the word, either for the corporation or for the stockholders. The assets subject to be paid over to the stockholders would be in the legal sense assets of the trust company itself. Even in the strict equitable sense they would be its assets. But if in such view they might be regarded as the assets of any one other than the trust company, they would have to be regarded as those of the corporation. It would be impossible in any view to regard the moneys as assets of the stockholders. Hence, the statute would not apply.

In the other possible view of the case the special deposit above described would continue a trust, but a trust primarily for the benefit of the corporation. The assets in the possession of the trust company would then be, in the equitable sense at least, assets of the corporation devoted by it to the particular purpose of redeeming the stock.

The question would then arise as to whether or not such an arrangement would constitute a trust for the benefit of the stockholders and the redemption of the stock as a transfer of such assets to the stockholders.

In connection with this question it must be remembered that a resolution to retire stock has the effect of terminating many of the incidents at least of the relation of stockholder and corporation. The right to dividends clauses, as does the right, if any, to participate in the internal management of the corporation. The situation becomes analogous to that arising between a vendor and a vendee under a contract of sale and purchase subject to conditions which have occurred. It is assumed, of course, in the discussion of this question that the stock has been issued under statutory provisions similar to those obtaining in Ohio, so that a subscription for or purchase of a share of stock gives rise not only to the relation of stockholder and corporation until the redemption takes place, but also to an executory contract between the corporation and the holder of the stock looking to the purchase of the share on or after a day certain, at the election of the corporation and at a fixed price. This option being exercised by the corporation, the stockholder ceases to be such in the full sense of the word and becomes merely a person having a right to offer the certificate to the corporation for purchase by it; and the corporation becomes

bound by its own action to purchase the stock when offered at a particular price.

In this view of the case the trust, if any, can be regarded as nothing more than a trust for the discharge of an executory contract of purchase. The fund to be used for this purpose cannot be regarded as belonging beneficially to the holders of the retired stock in proportion to their several interests therein, because in order to avail themselves of whatever right they may have to participate in that fund the holders of the retired stock will be obliged to part with their certificates, which now constitute choses in action in the sense that they evidence a claim to a matured contract of purchase.

Previous opinions of this department have laid down the principle that payment by a debtor to the estate of a deceased creditor of a claim due that estate cannot be regarded as a delivery or transfer of assets within the meaning of section 5348-2 G. C., for the reason that the asset of the estate consists of the duty to pay, which is known as a "credit" in the hands of the estate. The specific money which may be in the possession of the debtor and by him intended to meet the claim when presented belongs to him and is to be used by him in discharging the debt; it does not belong to the creditor. The principle applies a fortiori to the present case where the "asset belonging to the decedent" is evidenced in the tangible form of a certificate of stock which has been called on. What actually takes place is that this asset is liquidated; and its liquidation does not constitute a transfer of assets on the part of the corporation nor any agent or trustee of it.

For all these reasons it is concluded that on neither possible interpretation of the letter which is quoted in the Commission's request for opinion would the retirement of the stock in question through the agency of the trust company be a transaction which would require the giving of notice to the Tax Commission and its consent in writing thereto, in order to avoid the liability of the trust company for inheritance taxes.

SUPREME COURT

SYLLABI OF REPORTED CASES.

16220—The Fidelity & Deposit Co. vs. H. P. Wolfe et al., Trustees. Error to the Court of Appeals of Franklin County.

WANAMAKER, J.

1. Section 7, Article IV of the Constitution of Ohio, declares the probate court to be a court of record.

2. Section 8, Article IV of the Constitution of Ohio, expressly and directly grants jurisdiction to said probate court in "probate and testamentary matters."

3. The administration of a trust fund, by testamentary trustees created by will, is clearly within the jurisdiction of said court.

4. Section 10591, General Code, authorizes the probate court to take a new bond from such testamentary trustees, not only when manifestly required for the protection of the trust fund, but also for a substantial reduction of the expense of protecting such fund.

5. The trustees are included within the terms "an interested party" in filing an application for such new bond.

6. An order of the probate court releasing and discharging the sureties on a former bond after a new bond

has been given and approved, is a valid order that cannot be challenged by any subsequent proceeding upon the former bond made in the court of common pleas.

Judgment affirmed

Nichols, C. J., Jones, Matthias, Johnson and Donahue, JJ., concur.

15355—The Hocking Valley Railway Co. vs. The Public Utilities Commission of Ohio. Error to the Public Utilities Commission.

JOHNSON, J.

1. Sections 544 et seq., General Code, enacted pursuant to the provision in the judicial article of the Constitution as amended in 1912, that this court shall have such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law, provide for full judicial review of the proceedings and final orders of the Public Utilities Commission and do not violate the guaranties of the federal or state constitution.

2. The final order made by the Commission under the facts and circumstances of this case is not unlawful or unreasonable.

Order affirmed.

Nichols, C. J., Jones, Matthias, Wanmaker and Robinson, JJ., concur.

SECRETARY OF STATE

NEW CORPORATIONS

W. B. Hill Electric Co., Xenia, \$10,000. Don C. Wright, W. B. Hill, T. D. Wilson, Ohmer Tate, E. M. Hill.

Aero Engineering Co., Cleveland, \$20,000. Philip H. White, James A. Garfield, Henry A. Marting, Maude A. Smith, Vida Sanderson.

Loew's Mall Theatre Co., Cleveland, \$1,000. Ian M. Ross, M. M. Roche, B. Brabeck, L. Leppla, G. D. Kay.

Creighton-Bacon Co., Toledo, \$25,000. L. R. Creighton, Earl Bacon, Walter G. Kirkbride, John M. McCabe, Milton C. Boesel.

General Products Co., Cincinnati, \$20,000. Ed. J. Shannon, William C. Cosgrove, Elmer B. Schmieng, Charles A. Schler, Ellis F. Olmstead.

Dundee Silica Co., Columbus, \$100,000. F. A. Downard, F. C. Abbott, Charles W. Bryson, George Brewer, J. M. Schooler.

Warren Finance Co., Warren, \$100,000. Richard Kann, W. M. Carter, Elizabeth Baldwin, Helen Shoanberger, Emma Kistler.

L. and L. Trucking Co., Akron, \$50,000. W. Oliver Wise, George A. Le Doux, Ethel W. Le Doux, Everett T. Le Doux, Edward W. Esch.

Belmont Properties Co., Cleveland, \$10,000. William Rothenberg, W. H. McMoeris, Cedric G. Smith, Julian M. Andrus, Harry W. McLeod.

Friedman-Haas Co., Cleveland, \$25,000. S. K. Weitz, Irwin K. Loesen, Harry Pott, Marc J. Grossman, Fred B. Fishman.

Toledo Smelting and Refining Co., Toledo, \$100,000. Sam Kasle, Joe Kasle, Albert Cousins, Hannah N. Kasle, Frank G. Taschman.

Hilas and Coggsall Co., Cleveland, \$60,000. C. M. Hilas, J. Paul Thompson, J. S. Sheldon, E. K. Curtiss, Carl F. Lezius.

Eastern Hocking Coal Co., Columbus, \$110,000. J. H. Frantz, F. C. Simpson, C. T. Marshall, Gordon Battelle, Harry M. Himkile, W. R. Pomereene.

Rossford Realty Co., Rossford, \$25,000. La Verne H. Evans, William R. Hadnett, Ira Rook, William E. Rook, J. E. Ferguson.

Auto Alarm and Manufacturing Co., Cuyahoga Falls, \$10,000. George D. Porter, William H. Taylor, E. F. Cushman, C. H. Howland, Charles Bertsch.

Auto-Owners' Protective Service Co., Toledo, \$500. J. C. Young, Wm. Patterson, Orville Jones, Frank J. Klauser, Emmett C. Sayles.

Glenway Motor Car Co., Cincinnati, \$25,000. Alvin B. Sieve, Henry J. Lucas, G. H. Osterfeld, Otto Heeg, Jr., M. F. Galvin.

Lorentz Macaroni Co., Mansfield, \$100,000. J. F. Lorentz, Walter C. Lorentz, Ralph G. Lorentz, Winnie I. Lorentz, Myrtle E. Lorenz, Caroline J. Lorentz.

Maple Heights Land Co., Cleveland, \$25,000. E. L. Sindles, Wm. H. Gillie, Edward J. Cherney, Hervey E. Miller, Wm. H. Chapman.

Middletown Auto Sales Co., Middletown, \$20,000. W. R. Temple, A. E. White, F. L. Temple, D. E. Stowe, R. B. Augspurger.

Toledo Distributing and Forwarding Co., Toledo, \$15,000. F. E. Dunham, J. O. Fowler, Elizabeth R. Fowler, Alice Dunham, Lee G. Macomber, John W. Fowler.

Square Baking Co., Cleveland, \$100,000. Benjamin D. Holt, F. S. McGowan, A. R. Manning, Jr., E. A. Foote, Edward Bushnell.

Coleman Coal & Clay Co., Cleveland, \$95,000. Herman Quigley, K. Henderson, L. Quigley, H. B. Monett, J. M. Elliott.

Central Ohio Auto Co., Springfield, \$25,000. Elwood C. Bauer, A. M. Klepinger, Edwin L. McCleary, R. H. Brown, J. W. Mumma.

Kissel Development Co., Springfield, \$155,000. H. S. Kissel, Brown Burleigh, H. V. Bretney, August Henking, Homer C. Corry.

Zwee & Burr Co., Cleveland, \$50,000. John A. Elden, Samuel R. Zwee, Ralph I. Burr, Anna Zwee, Enoch F. Krueger, Jr., George J. Altman.

Euclid Property Co., Cleveland, \$50,000. A. J. Halle, D. B. Stone, J. O. Stein, J. Wertheimer, B. R. Kohn.

Coit Co., Cleveland, \$25,000. John M. Garfield, Leslie Nichols, King Toles, C. F. Reavis, Jr., Grover Higgins.

Charles Boldt Glass Co., Cincinnati, \$3,300,000. Frederick W. Schwenk, F. S. Whitehead, G. W. Zingerle, S. C. Nielson, William H. Watkins.

Forest City Machine and Forge Co., Cleveland, \$830,000. Alonzo M. Snyder, R. E. Roehm, G. M. Roudebush, K. M. Hanahan, N. I. Young.

Youngstown Gardens Co., Youngstown, \$100,000. L. O. Beck, H. V. Blount, Dow W. Harter, G. W. Auten, R. L. Pardee.

J. Simon Co., Akron, \$20,000. Julius Simon, Maggie Simon, Jacob Schaff, Elizabeth Schaff, Anton Maudlin.

Northern Bronze and Casting Co., Cleveland, \$10,000. S. Schwartz, A. V. Tablett, Charles A. Wamser, Jerome I. Greenbaum, George J. Keller.

Progressive Candy Co., Columbus, \$15,000. Nathan Bornheim, S. M. Hynehan, Sol W. Goldsmith, Lee Bornheim, Clarence Cahen.

Chestnut Hills Estates Co., Akron, \$30,000. Walter Carroll, William W. Harold, Jr., Arthur C. Sprague, A. L. Freedlander, Kenneth Banks.

Lawler Rubber and Supply Co., Canton, \$40,000. W. F. Lawler, Jr., H. B. Fisher, B. B. Busche, Curtis A. Haner, Loren E. Souers.

Todhunter Building and Realty Co., Columbus, \$25,000. H. H. Todhunter, B. H. Todhunter, Luther L. Boger, S. H. Deming, M. B. Shufelt.

Model Creamery Co., Cleveland, \$10,000. Asher Levin, W. W. Rosenzweig, Florence Chapin, Alfred Safran, Julius N. Galvin.

Loyal Co-operative Society Co., Cincinnati, \$25,000. G. L. Yeatts, C. C. Sammons, R. W. Lovett, John M. McLean, S. L. Clark.

Bieger Land Co., Cleveland, \$50,000. John Bieger, Christena Bieger, E. A. Peckham, M. A. Maroni, George M. Roudebush.

Cornwell Quality Tool Co., Cuyahoga Falls, \$50,000. Eugene Cornwell, B. L. Coleman, C. R. Barnes, H. L. Wandschneider, L. Orlando Wilcox.

Todd Oil and Paint Co., Cleveland, \$100,000. Harvey G. Mattox, Albert M. Gates, C. H. Voorhees, N. J. Brewer, A. B. Curtiss.

Wimder Ice Machine and Refrigeration Co., Cincinnati, \$5,000. Thomas H. Morrow, George F. Wimder, Stanley Isaacs, Irwin Smith, Milton B. Johnson, Thomas G. Emmert.

Loew's Park Theatre Co., Cleveland, \$1,000. Ian M. Ross, M. M. Roche, B. Brabeck, L. Leppla, G. D. Kay.

Bender Body Co., Cleveland, \$75,000. Herman Bender, Emanuel J. Uhlyarick, Herman Kronenbergeer, John Kern, Peter Boeowski.

Hotel Operating Co., Cincinnati, \$50,000. A. L. Quill, Edwards Ritchie, Fred Weiland, George W. Martin, Edward A. Vosmer.

Jackson Co-Operative Co., Jackson, \$10,000. F. M. McClain, F. W. Knauer, C. C. Hansee, F. L. Shoemaker, Wm. J. Lamb, Jr., J. A. Hensley.

Kennedy-Reiter Manufacturing Co., Niles, \$40,000. M. G. Kennedy, Clarence A. Reiters, H. M. Scriven, Carter C. McConnell, Wm. H. Stevens.

Loew's Capital Theater Co., Cleveland, \$1,000. Ian M. Ross, M. N. Roche, B. Brabeck, L. Leppla, C. D. Kay.

Projectograph Co., Cleveland, \$10,000. Alexander Weiss, Clinton J. Phare, Nicholas Luckring, Clarence G. Lisch, John A. Burke.

Sam B. Anson Co., Cleveland, \$4,000. Sam B. Anson, Lucy Jeane Price, R. G. Collier, M. H. Laundon, Charles S. Wachner.

Lyman Bailery Rubber Co., Akron, \$10,000. A. H. Commis, Edwin W. Bronse, C. Blake McDowell, Frank R. Schener, Amos H. Englebeck.

Elmore Manufacturing Co., Cincinnati, \$25,000. Archie Simon, Sam Silverstein, Dave Ostand, Jacob S. Herman, Abe Korelitz.

Akron Markets Co., Akron, \$75,000. John A. Dunn, Lewis G. Hochberg, Frank D. Prior, Alexander J. Schaefer, L. Robert Houston.

R. D. Swan Co., Cleveland, \$10,000. J. William DeCumbe, R. D. Swan, W. E. Godfrey, E. H. Price, J. H. Bedell.

Stotter-Mikes Jewelry Manufacturing Co., Cleveland, \$5,000. Louis Stotter, George R. Mikes, Otto B. Mikes, Benjamin F. Knop, Frances F. Stotter.

Orban-Hunt Co., \$25,000, Cleveland. S. H. Miller, A. J. Halle, L. Flatau, B. R. Kohn, J. Wertheimer.

Marsh Manufacturing Co., Cincinnati, \$25,000. D. W. Rudisell, F. S. Starkey, Sargent Marsh, Karl L. Brown, August J. Schepper.

M. Rosenblum Credit Clothing Co., Cleveland, \$500,000. Max Rosenblum, Myron M. Rosenblum, Sidney Rosenblum, Phillip Robbins, Jos. Amster.

System Equipment Co., Cleveland, \$25,000. C. M. White, N. J. Brewer, A. B. Curtiss, C. H. Pell, Jr., L. N. McShane.

Comet Manufacturing Co., Dayton, \$50,000. Joseph McNabb, D. C. Mills, J. M. Leis, Golda C. Rohrer, Charles V. Ward, Extra Shank.

Western Reserve Bond and Share Co., Cleveland, \$105,000. E. C. Tillotson, Julian W. Tyler, Gardner Abbott, John M. Garfield, Leslie Nichols.

Mutual Oil and Gas Co., Zanesville, \$50,000. Samuel Frazier, Karl S. Dixon, Milton Fortier, Omer Snider, W. A. Francis, I. R. Goodman.

Bogart Truck Line Co., Bowling Green, \$25,000. Clarence Bogart, Blanda V. Bogart, Earl D. Bloom, Virgil English, H. J. Rudolph.

Summit Beach Navigation Co., Akron, \$100,000. John R. Gammeter, B. V. Booth, A. J. Bietz, J. A. Cramer, Charles F. Safreed.

City Metal Casting Co., Elyria, \$4,000. O. A. Dossin, James Melet, Paul Miadok, Armen Kurjian, Helen Dossin.

Waco Coal Co., Canton, \$10,000. Hester J. Stein, Charles C. Stein, E. J. Smith, A. H. Byers, H. J. Dobbins, G. E. Osborn.

Garfield Service and Tire Co., Cleveland, Arthur J. Piper, R. S. Conway, Wilson Kern.

Universal Tie, Switch & Manufacturing Co., Cleveland, \$175,000. E. E. McCloud, John A. Nash, J. L. Francis, M. Grady, H. C. Berghaus.

Silver Lake Sales Co., Cleveland, \$25,000. C. A. Alexander, Q. B. Findley, K. T. Siddall, T. M. Dye, I. M. McDonough.

Star Oil and Gas Co., Cincinnati, \$250,000. Michael R. Moran, John C. Rogers, Jacob F. Jonas, William F. Fowler.

Cleveland Motor Car Realty Co., Cleveland, \$50,000. John C. Simon, A. E. Powell, R. H. Dawson, Sinfeld Worline, William Gordon.

Nutritia Co., Cincinnati, \$500,000. George L. P. Squibb, E. C. Eikenberry, E. A. Fitzgerald, N. E. Squibb, R. F. Fitzgerald.

Farm Mortgage Co., Cincinnati, \$100,000. George W. Platt, Ray F. Nieman, F. J. Rush, T. H. Shelly, E. Kirshner.

Goelz-Loecher Motor Car Co., Columbus, \$50,000. A. W. Loecher, Ed. B. Goelz, John T. Powell, E. H. Eckert.

Welfare Loan Co., Dayton, \$400,000. Morton S. Hawkins, A. A. Scheib, E. B. Rayburn, Ed. A. Goubeaux, Linn Browne.

Fred D. Warner Co., Cleveland, \$10,000. Roscoe M. Ewing, James L. Lind, E. L. Heasley, Damas Desnoyers, Ernest Ewing.

Fredericktown Co-operative Grocery Co., Fredericktown, \$10,000. J. R. Johnson, John Z. Hull, J. B. Welch, Charles F. Chink, E. L. Tornas.

George M. Chute Supply Co., Toledo, \$20,000. Samuel S. Schwab, Maurice M. Schwab, Herbert P. Whitney, Cora L. Fallon, Luella Ahrendt.

Hibbard Co., Cleveland, \$5,000. R. H. Jamison, I. W. Sharp, J. E. Bachman, H. P. Baker, S. C. Smith.

Virginia Grill Co., Columbus, \$10,000. Isidore Vam-Heers, Maurice Sharr, Samuel Graff, Fred Weischappel, Max Goldsmith.

National Plumbing, Heating and Distributing Co., Toledo, \$25,000. G. L. Lewis, H. R. Carrington, A. H. Miller, F. B. Mumma, C. F. Weissenberger.

National Container Co., Cincinnati, \$200,000. John D. Ellis, Walter P. Dolle, R. C. Cronin, A. Wood, E. A. Fulner.

Fairfield Engineering Co., Lancaster, \$100,000. H. B. Walker, E. U. Cave, William H. Wilson, R. S. Trout, N. D. Weed.

Siam Oil and Gas Co., Columbus, \$40,000. Charles G. Kanavel, Charles F. Spicer, John F. Jones, William H. Joyce, George T. Drake.

United Engineering Co., Dayton, \$10,000. John G. Collison, F. A. Groves, Carl A. Lange, William I. Sullivan, Edward R. Mueller.

Welfare Loan Co., Columbus, \$400,000. M. S. Hawkins, A. A. Scheib, C. B. Rayburn, Linn Brown, Ed. A. Goubeaux.

Acme Garment Co., Cincinnati, \$60,000. Clinton Fisher, David Sway, Joseph W. Rouda, Alvin H. Rowe, Harry W. Quitman.

Malbin Bros. Co., Cleveland, \$210,000. J. S. Kohn, Joseph Malbin, Sam Malbin, Louis Malbin, L. M. Young, E. C. Landsman.

Automotive Sales Co., Lima, \$100,000. Emory H. Dorsey, Edward Cardesi, E. L. Stanley, Elmer H. Valentine, Fred W. Stanley, H. W. Gracely, Ray Smith, Elmer McClain.

James Workman & Sons Co., Steubenville, \$150,000. James Workman, Frank C. Workman, Wilbur J. Workman, Charles E. Workman, W. R. Alban.

Detroit Avenue Realty Co., Lakewood, \$5,000. Harry W. Lower, R. L. Toben, J. G. Bingham, R. M. Ewing, Perry D. Caldwell.

Glenview Co., Cleveland, \$25,000. K. I. Siddel, Quay H. Findley, J. H. Schultz, C. A. Alexander, Trafton M. Dye.

Threm-Davis Co., Toledo, \$10,000. William B. Threm, Claud A. Davis, Fred H. Threm, Oscar W. Tyler, Ernest A. Helle.

North Auburn Equity Exchange Co., North Auburn, \$15,000. E. W. Shell, John F. Strohm, David French, Phillip Cramer, Peter A. Smith.

Excelsior Oil Co., Cleveland, \$100,000. John R. Warren, J. Brice Miller, E. B. Comyns, E. Brown, G. M. Adams.

Brownledge Club Co., Columbus, \$20,000. A. F. McDowell, M. J. McDowell, J. C. Pfaff, J. W. Gheen, H. I. Clarke.

Reuben Estate Co., Toledo, \$30,000. Al. E. Reuben, Zale A. Reuben, Frances R. Honeck, Olive L. Meiring, William C. Rous.

Buchtel Avenue Realty Co., Akron, \$50,000. O. N. Harter, Fred S. Harter, Beula B. Wadley, E. B. Wadley, Carl Eugene.

Willis Motor Sales Co., Canton, \$100,000. Dan H. Willis, A. H. Willis, D. H. Favret, C. L. McLain, A. M. McCarty.

Woodland Investment Co., Cleveland, \$12,000. M. J. Anderson, M. Holben, Moses N. Rider, M. J. Koblitz, S. I. Davis.

Cohen, Friedlander & Martin Co., Toledo, \$500,000. M. E. Goldmann, Sigmond Sanger, Otto H. Spengler, M. C. Siglow, T. Wooster.

Harry L. Morgan Co., Columbus, \$12,000. Harry L. Morgan, Thomas W. Ruff, J. E. Butler, A. C. Farmer, Joseph P. Eagleson.

Community Wet Wash Laundry Co., Dayton, \$50,000. W. L. Stonebarger, Charles Selz, Carl H. Frech, E. J. Bunderthal, E. A. Selz, Charles W. Slagle.

Brettell Coal Co., Mingo Junction, \$200,000. W. J. Brettell, J. E. Brettell, D. C. Reising, George L. Thompson, Thomas E. Stewart.

Miami Sand and Gravel Co., Dayton, \$40,000. George H. Gengnagel, Gilbert R. Elchelberger, William M. Adelberger, William E. Stoecklein, Neil McGreevy, Howard E. Arnold.

Crawford-Rickers-Storer Co., Cleveland, \$21,500. H. D. Crawford, H. V. Stevenson, L. E. Saulpaugh, H. W. P. Storer, I. C. Caughlin.

Standard Service Co., Cincinnati, \$25,000. R. M. Hearne, A. Anthony, Edw. M. Gatliff, Robert A. Gellenbeck, Leo. F. Clarke.

Monticello Co., Toledo, \$10,000. E. H. Rhoades, Jr., J. D. Rhoades, Wm. J. Kelly, Edna A. Schramm, Edna I. Livingston.

Sweeney & James Co., Cleveland, \$50,000. J. F. Sweeney, Frank G. James, Harrison B. McGraw, T. H. Bushnell, Harold M. Metcalf.

Carlile & Kerr Realty Co., Columbus, \$10,000. Wm. A. Carlile, Charles L. Carlile, James R. Carlile, Benjamin F. Kerr, R. Stanley Kerr.

Margaretta Short Line Railroad Co., Sandusky, \$10,000. John S. Gledeman, Joseph G. Pyle, Alvin H. Biehl, H. W. Parsons, M. L. Osborne.

Wolf Creek Soap Works Co., Dayton, \$10,000. William Schauder, Mrs. Anna Schauder, Edw. Schauder, Bernard R. Schauder, Augusta Schauder.

Lincoln Tool Co., Dayton, \$10,000. A. V. Dickerson, M. M. Hedding, L. S. Jacobson, John Dineen, Alfred McCray.

U. S. Tool and Supply Co., Steubenville, \$35,000. L. Ginsburg, J. M. Kaufman, Alex Ginsburg, Mendel Ginsburg, Marcus L. Ginsburg.

Complete Construction Co., Cleveland, \$50,000. Charles A. Krueger, Wm. G. Nitschke, Leo Roeter, Ralph M. Hulett, John A. Nieding.

Mahon and Sabel Co., Cleveland, \$10,000. Dudley J. Mahon, Anthony Sabel, Edward A. Mahon, William C. Bracken, C. A. Spielman.

Loew's Alhambra Theatre Co., Cleveland, \$1,000. Ian M. Ross, M. M. Roche, B. Brabeck, L. Leppla, G. D. Kay.

Loew's Liberty Theatre Co., Cleveland, \$1,000. Ian M. Ross, H. M. Roche, B. Brabeck, L. Leppla, G. D. Kay.

Community Kitchen Co., Grandview Heights, \$10,000. Ethel H. Thompson, Mary Hill Kern, G. S. Hershey, Catherine Thompson, O. C. Weist, F. Constable, F. B. Hoover.

Warren County Printing & Publishing Co., Lebanon, \$12,000. W. Harry Spears, C. Helena Spears, Frank Johannes, Thomas C. Christie, Patrick Gaynor.

Progressive Home Co., Cincinnati, \$15,000. M. J. Settelay, John M. Topmiller, Nic Ludwig, J. Kelly, L. Ausdenmoore, B. Klein, John Huelsman, Marloan Strack, Henry B. Jacob.

Dayton Tow Line & Tire Lock Co., Dayton, \$10,000. John T. Rose, James L. Coffield, Herman H. Kahn, Robert J. Cain, Richard J. McCarty.

Commonwealth Finance Co., Cincinnati, \$2000. W. H. Valentine, George W. Welch, William Monroe, Harry A. Hell, H. N. Sroufe.

W. A. Stinchcomb Co., Cleveland, \$1,000. W. A. Stinchcomb, Annie May Stinchcomb, Vernon D. Croft, Robert A. Friedel, Sterling Parks.

Apex Brass Manufacturing Co., Cleveland, \$50,000. A. F. Counts, Jos. H. Mellen, L. G. Behrens, Lee Dinkel, I. Herzbrun.

Cohasset Home Building Co., Youngstown, \$100,000. B. M. Campbell, John W. Davis, C. B. Klingsmith, C. F. McCall, A. E. Reinman, J. G. Butler, Jr., T. B. Van Alstine, W. H. C. Grant, L. E. Moreman.

Modern Apartments Co., Youngstown, \$50,000. F. J. Cook, Ira B. Craig, Robert A. Erb, L. Abdin Brown, Louis J. Hunter, Louis Miller.

Increases

Stockham Co., Portsmouth, \$150,000 to \$300,000.

Sterling Service and Amusement Co., Cleveland, \$1,000 to \$400,000.

C. & E. Marshall Co., Columbus, \$250,000 to \$500,000.

No. 6 Coal Co., Russell, \$25,000 to \$100,000.

Bulkley Building Co., Cleveland, \$2,500,000 to \$7,700,000.

Estates & Investment Co., Cleveland, \$10,000 to \$160,000.

Rentchler Co., Deshler, \$16,000 to \$56,000.

Calder-Hatchin Co., Cleveland, \$25,000 to \$35,000.

Arthur M. Crumrine Co., Columbus, \$25,000 to \$100,000.

Rawson Safety Guard Co., Cleveland, \$5,000 to \$50,000.

Perfection Cloak & Suit Co., Cincinnati, \$30,000 to \$100,000.

Howe Hotel Co., Akron, \$65,000 to \$450,000.

Fowler & Slater Co., Cleveland, \$40,000 to \$60,000.

Seyler Medicine Co., Cincinnati, \$25,000 to \$75,000.

Ohio State Direct Clothing Co., Cleveland, \$50,000 to \$1,000,000.

Licking Agricultural Co., Newark, \$150,000 to \$250,000.

Dayton Pneumatic Tool Co., Dayton, \$50,000 to \$75,000.

J. W. P. Tire Co., Dayton, \$5,000 to \$55,000.

Gunning Cigar Co., Chillicothe, \$50,000 to \$100,000.

Flexible Side Car Co., Loudonville, \$25,000 to \$500,000.

W. B. W. Tool Co., Dayton, \$10,000 to \$50,000.

Handy Supply and Manufacturing Co., Lakewood, \$10,000 to \$50,000.

Wellington Rubber & Novelty Co., Wellington, \$15,000 to \$100,000.

East 61st Street Building Co., Cleveland, \$10,000 to \$350,000.

Ohio Guaranty Tire & Rubber Co., Cleveland, \$100,000 to \$600,000.

City Supply Co., Cleveland, \$75,000 to \$100,000.

S. H. Thomson Manufacturing Co., Dayton, \$25,000 to \$60,000.

Plymouth Stamp Metal Co., Plymouth, \$25,000 to \$50,000.

S. Barker's Sons Co., Cleveland, \$75,000 to \$90,000.

Chillicothe Bottling Co., Chillicothe, \$100,000 to \$250,000.

Alvo Co., Ashland, \$100,000 to \$500,000.

Fairmont Service Co., Cleveland, \$10,000 to \$20,000.

Johannesberg-Neuger Co., Cleveland, \$10,000 to \$25,000.

Wm. S. Adler Co., Cleveland, \$10,000 to \$15,000.

I. V. Sutphin Co., Cincinnati, \$75,000 to \$150,000.

Sharpsburg Realty Co., Norwood, \$30,000 to \$100,000.

Steubenville Gazette Co., Steubenville, \$50,000 to \$100,000.

Rotary Tire and Rubber Co., Zanesville, \$400,000 to \$800,000.

Berea Milling Co., Berea, \$15,000 to \$50,000.

Webster Manufacturing Co., Tiffin, \$800,000 to \$8,000,000.

Mineral Bath Sanitorium Co., Columbus, \$25,000 to \$100,000.

Realty Holding Co., Akron, \$10,000 to \$75,000.

Decreases

Toledo Home Furniture Co., Toledo, \$100,000 to \$25,000.

Webster Manufacturing Co., Tiffin, \$800,400 to \$800,000.

PUBLIC UTILITIES COMMISSION

No. 645-794—In the Matter of the Joint Application of The Central District Telephone Company, et al.

(Opinion Dated November 20, 1919.)

Applications For Modification of Former Orders Fixing Rates and Prescribing Service.

By the Commission:

In the above entitled matter, the Chesapeake and Potomac Telephone Company of West Virginia, successor to the Central District Telephone Company, filed an application for a modification of the former order of this Commission fixing rates for telephone service in the following named towns and cities:

Barnesville, Bellaire, Bethesda, Bridgeport, Fairview, Marietta, Martins Ferry, Mingo Junction, Morristown, New Matamoras, Newport, St. Clairsville, Shadyside, Steubenville and Woodsfield, and a separate application for a like order fixing rates in the towns of Niles and Girard.

The Central District Telephone Company in the year 1916, purchased and merged with the local companies in the first named towns, and in the year 1917, took over and merged with the local company at Niles and Girard. Thereafter, the Central District Telephone Company transferred to the Chesapeake and Potomac Telephone Company of West Virginia, its plants and property in the above named towns and cities.

At the times of the mergers of the plants in said towns, with the Central District Telephone Company, the Public Utilities Commission fixed the rates for service in the respective towns and cities, which rates remained in effect until June 16, 1919, when they were superseded by the rates now in effect promulgated by the Postmaster General of the United States, said Chesapeake and Potomac Telephone Company of West Virginia being then under federal control.

Since the return of the telephone lines to private control, the Chesapeake and Potomac Company, on the 30th day of July, 1919, filed its said application with this Commission asking for a modification of its former order, so as to permit said company to put into effect in said towns and cities, rates greatly in excess of the rates

fixed by the Postmaster General, alleging that because of the increased cost of labor and material, those rates are wholly insufficient to pay the cost of operation and yield a fair return upon the investment.

Said company also filed schedules covering its service in other towns where rates have not been fixed by the Commission, seeking to raise the rates to the level of those sought to be instituted by a modification of said former order.

A hearing was had on this application and evidence and data submitted in support of the company's contention.

It is claimed by the said Telephone Company that under the rates which existed prior to June 16, 1919, it would have lost during the present year, \$104,000; that under the present rates fixed by the Postmaster General, it will earn only eight-tenths of one per cent on its investment, after paying operating expenses, taxes, etc.

In arriving at this conclusion, however, the company estimates the value of its property as a whole, by taking the values of the several properties as fixed by the Commission at the time of the mergers, adding thereto the actual cost of additions and betterments since said date, and deducting therefrom replacements, but making no deductions for depreciation of the additions. This is clearly wrong.

In estimating the rate of return, the company figures 6.82 per cent as necessary to be set aside for deferred maintenance. This figure is 1.12 percent greater than the rate fixed by the Postmaster General. The Commission thinks that either figure is excessive for the property.

By this process of reasoning, the company arrives at the conclusion that the present rates will yield a return of only eight-tenths of one percent during the current year, and that it must have greatly increased rates to yield an adequate return.

A large part of the computation is based on estimates, and estimates are often very unreliable. The present rates have not been in effect a sufficient length of time to furnish a reliable basis for figuring permanent rates. The country is in an unsettled state, both as to wages and cost of material. This is an inopportune time to attempt to fix permanent rates for any kind of utility service in the future.

During the World War, telephone rates were increased throughout the country by the Postmaster General, in a somewhat summary manner, and in considering the justness of rates so fixed,

it is necessary that, for the time being at least, this Commission should deal with them in a similar manner. There are more than five hundred telephone companies doing business in Ohio. Some of them seem to be proceeding with unseemly haste to file schedules increasing their rates. Many such increases are being challenged by subscribers, and the telephone department of this Commission is taxed to the uttermost in making investigations to determine the reasonableness of such increases. Should the Commission attempt to appraise all of these properties, as a basis for fixing rates, years would elapse before the task could be completed; and it is manifestly unfair to the public, to appraise properties constructed over a period of a score or more of years at present-day prices, as a basis for fixing permanent rates for the future. This Commission will not suffer its hands to be tied by this tedious process. It has appraised many telephone properties located in almost every section of the state, and has on file much reliable data, from which the value of telephone properties may be reasonably estimated. It is familiar with the increased cost of labor and material, figures covering the same having been repeatedly submitted in rate hearings, and has fixed numerous telephone rates for both large and small properties, and can by comparison, and by an investigation of the books of the company and of its methods of doing business, fix rates which will be approximately reasonable during those unsettled conditions. And in this and other investigations, it must of necessity proceed in this manner, otherwise the public might be greatly wronged while waiting for the tedious processes of the law.

Having considered all of the facts and circumstances surrounding this case, and the evidence submitted, the Commission concludes that the higher rates asked for by the applicant company, are unjustified at this time; that the rates now in effect have not been sufficiently tested to determine by actual experience, whether or not they are too high or too low. The order in this matter will be that with certain conditions and modifications hereinafter mentioned, the exchange rates for service in these respective towns and cities, shall be continued for a period of one year from the date they became effective, to-wit: from June 16, 1919, at the expiration of which time, the company will be required to render an account of its receipts and expenditures and other data, for the further consideration of the Commission, and for that purpose, jurisdiction will be retained for a further and final order.

When the Central District Telephone Company took over the

contention and the only serious objection to the mergers, urged on the part of patrons, was that they had theretofore enjoyed a wide area of free service between exchanges; and it was shown that in some of the counties the river towns were much larger than the county seat; that they were thriving industrial towns, in such close proximity to each other, and so inter-related in a business way, that they in fact constituted one large industrial center, all having need of constant communication with each other and with the county seat. After an exhaustive hearing attended by many members of Boards of Trade and municipal councils, a system of free exchange was worked out, giving to each town, free service to those in close proximity and with which it had the most intimate business relations; and although not of record, it was tacitly agreed that this arrangement should not be lightly disturbed.

The schedule of rates approved by the Postmaster General changed these territorial boundaries. In some cases the rates were raised and the free territory, so-to-speak, was restricted. For example: At Bellaire, Bridgeport and Martins Ferry, the one-party business rate was raised from \$54 to \$66 per annum; the four-party residence rate from \$18 to \$21 per annum, and free service which had theretofore been extended to St. Clairsville, the county seat, was withdrawn. At St. Clairsville two rates were lowered, the others remained unchanged, but the free service to Bellaire, Bridgeport and Martins Ferry was withdrawn, cutting out by far the larger part of the service.

It is against this restricted service, quite as much as the raise in rates, that protest is now made.

While as a general proposition, the Commission believes that free service between exchanges leads to a profligate use of the same and is detrimental to good service, yet in this particular case there are unusual conditions and circumstances which warrant a return to the free exchange areas established by the Commission at the time of the merger.

The order of the Commission will be that at all points where the rates approved by the Postmaster General increased those fixed by this Commission at the time of the mergers, and curtailed the area of free service, the territorial limits as prescribed by the Commission shall be restored. At all points where the rates and the area of free service were unchanged, said rates shall remain in force during said period of one year. At St. Clairsville the area of free service as fixed by the former order of the Commission shall be re-

stored, and at rates not to exceed those fixed in said order; but with the proviso that the company may within said period if it so desires, submit evidence to the Commission as to the adequacy of said St. Clairsville rates at the present time.

An order will enter accordingly.

Based on the record in this case and on data and information gathered by the telephone department in this and similar territories, the Commission of its own initiative will reject the schedules filed by the said Chesapeake and Potomac Telephone Company in which higher rates are sought to be instituted in the remaining towns in Ohio served by said company, effective December 1, 1919.

In the readjustment which resulted in the promulgation of the rates now in effect in said towns, the population and a number of stations which could be reached by a subscriber were taken into consideration and the rates fixed accordingly. It is the opinion of the Commission that these rates should remain in effect for said one-year period, at the end of which time a report should be made as to the results of actual operation under them, and it will be so ordered.

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No. 342—Charles S. Turner, Complainant, vs. The Toledo Railways and Light Company, Defendants.

(Dated October 7, 1919.)

This day, after full hearing and argument by counsel this cause came on for further consideration:

And the Commission, first, taking under consideration the tentative valuation, heretofore certified, of the several classes and kinds of property of said The Toledo Railways and Light Company used and useful for the convenience of the public in the furnishing of hot water heating service, and of said property as a whole, as of June thirtieth, 1919, and the protests thereto, of the City of Toledo, Ohio, and said The Toledo Railways and Light Company, finds:

That the following errors were made in the compilation of the aforesaid tentative valuation and that proper correction thereof should now be made, viz:

1. Buildings and Structures, to be added to figures given: Reproduction value \$91.15; Present Value, \$58.14

2. Distribution System, (Services), to be deducted from figures given: Reproduction value \$7,391.00, Present Value, \$4,804.14

3. Overheads, to be deducted from figures given: Reproduction value \$1,018.33, Present Value, \$1,018.33, or

	Reproduction Value	Present Value
Total deductions	\$8,409.33	\$5,822.47
Total additions	91.15	58.14
Net deductions	<u>\$8,318.18</u>	<u>\$5,764.33</u>

It is, therefore,

Ordered, That the following be, and hereby it is determined to be and made the final valuation of the several classes and kinds of property of The Toledo Railways and Light Company, used and useful for the convenience of the public in the furnishing of hot water heating service, and of said property as a whole, as of June thirtieth, 1919:

And the Commission coming now to consider the application of said The Toledo Railways and Light Company for such further modification and amendment of the findings and orders herein as will permit and authorize it to establish, maintain, charge and collect such rates and charges for the furnishing of hot water heating service to its customers and the public in the City of Toledo, Ohio, as will afford it a revenue sufficient, (1) to pay the expenses of the operation and maintenance of its property, used and useful in the furnishing of such service; (2) to provide such replacement fund allowance as is necessary for its property, used and useful in the furnishing of such service, and (3) to render to it a fair rate of return on its investment, to wit, on the value of its property, used and useful in the furnishing of such service, and being fully advised in the premises, and having caused an appraisement to be made and having ascertained and hereinbefore determined and fixed the value of the property of said company actually used and useful for the convenience of the public in the furnishing of hot water heating service, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right, and exclusive of any value added thereto by reason of a monopoly or merger, and having taken into consideration the necessity of making reservations from income for

surplus, depreciation and contingencies, and all other matters which were deemed proper, the Commission finds the following rates and charges to be reasonable and just for the furnishing of hot water heating service by The Toledo Railway and Light Company to its customers and the public in the City of Toledo, Ohio.

Square feet of customer's demand.

1st 500 sq. feet, or fraction,	\$0.3876 per sq. ft. per season
2nd 500 sq. feet, or fraction,	0.3553 per sq. ft. per season
3rd 500 sq. feet, or fraction,	0.3446 per sq. ft. per season
4th 500 sq. feet, or fraction,	0.3127 per sq. ft. per season
Next 3000 sq. feet, or fraction,	0.2909 per sq. ft. per season
Over 5000 sq. feet, or fraction,	0.2697 per sq. ft. per season

While the Commission finds that the foregoing rates are necessary to yield an adequate return on the company's investment, owing to the high cost of operation, due to the increase in the costs of labor and material, growing out of the world war, and while this Commission has no authority to require a utility to furnish its service at a rate less than sufficient to yield an adequate return upon its investment; yet, in view of the fact that the rates are greatly in excess of the rates heretofore charged for this service, and the further fact that the limited number of consumers of this service have their houses piped for hot water and cannot—especially at this season of the year—change to any other system of heating without great expense and inconvenience, we think that, in all good conscience, the company ought, voluntarily, to extend to its customers, during the present year, rates somewhat lower than the foregoing schedule, but sufficient to pay operating expenses and a lower rate of return than this Commission could lawfully enforce by order, thereby dividing the burden of abnormal costs during the current year, and giving the consumers an opportunity, during the next year, should they so desire, to prepare for a change in their method of heating; and the Commission recommends that said company give this suggestion serious and favorable consideration. It is, therefore,

Ordered, That the order, made and entered herein, prescribing rates and charges for the furnishing of hot water heating service be, and hereby it is further modified and amended to permit and authorize said The Toledo Railways and Light Company to establish, maintain, impose, charge and collect for the furnishing of such service during the heating season of 1919-1920, such reasonable rates and charges, not in excess of the rates and charges heretofore found to be just and reasonable, as said The Toledo Rail-

ways and Light Company may elect to establish under and pursuant to this order and the aforesaid suggestion of this Commission. It is further

Ordered, That schedules be published and filed by said The Toledo Railways and Light Company in conformity therewith.

PROPERTY OF THE TOLEDO RAILWAYS & LIGHT COMPANY

Used and Useful for Hot Water Heating Service, as of June 30, 1919.

No. of Items Page No.	Description Summary	Reproduc- tion Value	Total %	Total Deprecia- tion	Present Value
4	Land	29383.00	0	0	29383.00
8	Buildings & Structures.....	78371.20	17.6	13775.40	64595.80
21	Heating Plant Equipment Less Piping	291009.22	26.4	76848.93	214160.29
53	Distribution System	357250.00	35.14	125553.54	231696.46
67	Miscellaneous	8994.90	19.35	1739.67	7255.23
101	Utility Equipment.....	11041.69	21.15	2335.84	8705.85
102	Station Piping	94175.64	30.47	28698.47	65477.17
	TOTAL.....	870225.65	28.66	248951.85	621273.80
	Intangibles and Overhead				
	Omissions, 1%	8702.26			8702.26
	Preliminary Organization Exp. 5%	43511.28			43511.28
	Taxes at 1½% for one year.....	13053.38			13053.38
		935492.57			686540.72
	SUB TOTAL.....	56129.55			56129.55
	Interest at 6% for one year.....	49281.73			49281.73
113	Working Capital	1040903.85			791952.00
	Total Property used & Useful..	1399.20		347.04	1052.16
112	Property not used and useful....				
	GRAND TOTAL.....	1042303.05		249298.89	793004.16

3

No. 1799—In the Matter of the Application of The Ohio State Power Company for Consent and Authority to Issue and Sell \$195,000.00 Par Amount, of First Mortgage, Twenty Year, Six Per Cent. Gold Bonds, Dated June 1, 1919. Prayer Granted.

(Dated November 7, 1919.)

This day this matter came on for final consideration upon the application of The Ohio State Power Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue first mortgage, twenty year, six per cent. gold bonds, dated June 1, 1915, of the principal sum of \$195,000.00, the proceeds arising

from the sale thereof to be applied toward the reimbursement of applicant's treasury for eighty-five percentum of the sum of \$230,-132.48 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom between the dates August first, 1917, and September thirtieth, 1919, both inclusive, for the construction of additions, extensions and improvements to its facilities:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that, between the dates August first, 1917 and September thirtieth, 1919, both inclusive, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$230,132.48, none of which money was obtained from the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said bonds is reasonably required and the money to be procured thereby necessary for the partial reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom, and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Ohio State Power Company be, and hereby it is authorized to issue its first mortgage, twenty year, six per cent. gold bonds (dated June first, 1915) of the principal sum of one hundred and ninety-five thousand dollars (\$195,000.00), and that said bonds be sold for the highest price obtainable but not less than ninety (90) percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be applied toward the reimbursement of applicant's treasury for eighty-five percentum of the sum of \$230,132.48 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom, between the dates August first, 1917 and September thirtieth, 1919 (both inclusive) for the construction,

completion, extension and improvement of applicant's facilities, as more fully set forth in the detailed statement appended to the application herein as "Exhibit B," which exhibit hereby is made a part of this order by reference, and used for no other purpose whatsoever. It is further

Ordered, That the applicant make verified reports to this Commission of the issue and disposition of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1798—In the Matter of the Application of The W-G Power Company to Issue \$10,000.00 Capital Stock. Prayer Granted.

(Dated November 8, 1919.)

This day this matter came on for final consideration upon the application of The W-G Power Company (a corporation duly organized and existing under and by virtue of the laws of Ohio) asking the consent and authority of this Commission to issue common capital stock of the par value of ten thousand dollars, the proceeds arising from the sale thereof to be used to discharge the indebtedness incurred by the applicant for and on account of the purchase, on or about October twenty-second, 1918, of the electrical utility at Waynesburg, Ohio, the purchase of which, by applicant, was, by order this day made and entered in proceeding No. 1776, (in so far as this Commission has the authority so to do) formally approved:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding that, (a) the value of the property so acquired by the applicant is not less than the sum of \$10,000.00, and (b) that the issue of applicant's said common capital stock is reasonably required and the money to be procured thereby necessary for the payment and discharge of applicant's lawful indebtedness incurred for and on account of the aforesaid property, to be used and useful for the prosecution of applicant's corporate purposes, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The W-G Power Company be, and hereby it is authorized to issue its common capital stock of the total par value of ten thousand dollars (\$10,000.00), and that said capital stock be sold for the highest price obtainable but for not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The payment and discharge of applicant's indebtedness incurred for and on account of the purchase, on or about October twenty-second, 1918, of the electrical utility at Waynesburg, Ohio, which purchase of said property by the applicant was, insofar as the Commission has the authority so to do, this day formally approved by order duly made and entered in proceeding No. 1776. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property shall not be binding upon this Commission in any future proceeding involving the matter of rates or service.

*
3

No. 1778—In the Matter of the Joint Application of J. L. Kennedy and The W-G Power Company, for Approval of the Sale and Purchase of the Electric Plant at Waynesburg, Ohio. Prayer Granted.

(Dated November 8, 1919.)

This day this matter came on for final consideration upon the joint application of J. L. Kennedy, who, as an individual, had, heretofore and until the twenty-second day of October, 1918, owned and operated an electrical utility furnishing electrical energy for public and private use in the Village of Waynesburg, Ohio, under the trade name of Waynesburg Electric, and The W-G Power Company (a corporation duly organized and existing under and by virtue of the laws of Ohio, which, upon or about the aforesaid twenty-second day of October, 1918, purchased and has since operated the aforesaid electrical utility) asking that this Commission do now formally consent to and approve the aforesaid sale and purchase of said electrical utility property:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public was promoted by such sale and purchase of public utility property and that the public thereby has been furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that, in so far as it has the authority so to do, it should now formally approve the said purchase and sale of public utility property. It is, therefore,

Ordered, That in so far as it has the authority so to do, this Commission do now, and hereby, formally approve the sale, on or about the twenty-second day of October, 1918, of the electrical utility theretofore operated in the Village of Waynesburg, Ohio, under the trade name Waynesburg Electric, by the said J. L. Kennedy to The W-G Power Company, and the purchase thereof by said The W-G Power Company. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters. It is further

Ordered, That the applicants file schedules with this Commission providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property.

J

No. 820—In the Matter of the Application of The Hillsboro, Cynthia, Bainbridge and Chillicothe Traction Company to Issue Capital Stock and First Mortgage, Five Per Cent Bonds. Revocation of Order.

(Dated October 28, 1919.)

This Commission having heretofore, to-wit: Upon the sixteenth day of March, 1916, made and entered its order in the above proceeding consenting to and authorizing the issue, by said The

Hillsboro, Cynthiana, Bainbridge and Chillicothe Traction Company, of the following securities, to-wit:

	Par Value.
Common Capital stock	\$ 300,000.00
Six per cent. preferred capital stock	200,000.00
First Mortgage, five per cent. Bonds.....	1,300,000.00

“for the purchase of depot sites and other properties to be used and useful for the prosecution of applicant's corporate purposes, and the construction and equipment of a line of interurban electric railroad between the cities of Hillsboro and Chillicothe, Ohio,” and it appearing from the reports of said company to this Commission that, of said securities, only the following, to-wit:

Common capital stock 2524½ shares
 Six per cent preferred capital stock 6 shares,
 have been sold, the proceeds of which have been expended solely in the interest of the promotion of said enterprise, and no part of the same invested in “depot sites” or “other properties to be used and useful for the prosecution of applicant's corporate purposes”; and it appearing, further, that no definite action has been taken by said company toward the construction of its said proposed line of railway; and it appearing, further, that of the line of electric interurban railway of The Cincinnati and Columbus Traction Company, extending from Norwood to Hillsboro, Ohio, at which latter point the proposed lines of The Hillsboro, Cynthiana, Bainbridge and Chillicothe Traction Company was to connect therewith, that portion between the village of Owensville and the City of Hillsboro has, with the consent of this Commission, been discontinued and abandoned; and it appearing, further, that it would be impracticable, under the changed conditions and circumstances since the entering of said order authorizing the issue of said securities, to construct and operate said proposed line of railway; and it appearing further, that on the twenty-eighth day of August, 1919, said The Hillsboro, Cynthiana, Bainbridge and Chillicothe Traction Company was cited to appear before this Commission at its offices in Columbus, Ohio, on the twenty-first day of October, 1919, at ten o'clock a. m. of said day, “to show cause, if any there be, why the authority heretofore granted said corporation in relation to the issue and disposition of its capital securities should not, now, be revoked,” and no one appearing on behalf of said company at said time and place so fixed, and no cause being shown why said authority should not now be revoked, this Commission finds, in view of the foregoing facts and

circumstances, that said order, so made and entered herein as of date March sixteenth, 1916, in so far as it has not been exercised, should be revoked. It is, therefore,

Ordered, That the order, made and entered herein as of date March sixteenth, 1916, consenting to and authorizing the issue by said The Hillsboro, Cynthiana, Bainbridge and Chillicothe Traction Company, of common capital stock of the par value of \$300,000.00 six per cent, preferred capital stock of the par value of \$200,000.00 and first mortgage, five per cent. bonds of the principal sum of \$1,300,000.00, in so far as the same has not been exercised, be, and hereby it is revoked.

J

No. 1492—In the Matter of the Petition of The Mansfield Telephone Company of Mansfield, Ohio, and David R. Forgan, Edgar S. Bloom and Frank F. Fowle, as Receivers of Central Union Telephone Company, for Such Consent and Approval of the Commission as May be Necessary to Permit Them to Respectively Purchase and Sell Certain Telephone Property and to Enter into Contracts with Each Other that Will Enable Them to Interchange Toll Business. Prayer Granted.

(Dated October 25, 1919.)

This day, after full hearing due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of David R. Forgan, Edgar S. Bloom and Frank F. Fowle, the duly appointed, qualified and then acting receivers of Central Union Telephone

Company, and The Mansfield Telephone Company (a corporation duly organized and existing under the laws of Ohio), asking the consent to and approval, by this Commission, of the sale, by said receivers, and the purchase by said The Mansfield Telephone Company, of all the property of Central Union Telephone Company in and about the City of Mansfield, Ohio, and certain pole lines and toll circuits appurtenant thereto, and, further, to the making, by said applicants, of certain contracts providing, in chief, for a universal interchange of toll business by the applicant in lieu of the present restricted interchange of such service:

And the Commission having heretofore found and ascertained the valuation of the several kinds and classes of property of the

applicants used and useful for the convenience of the public in the furnishing of telephonic service in and about the City of Mansfield, Ohio, and of said property as a whole, upon which rates, charges, tolls and rentals are to be based for the furnishing of a unified service, and notice of such valuation having been duly given to the Mansfield Telephone Company, the Central Union Telephone Company (the receivers for said corporation having heretofore, and since the institution of this proceeding, been duly discharged by the courts appointing the same, and the property thereof having been duly restored to the custody of said corporation), and to the Mayor of Mansfield, Ohio, be registered letter, as provided by law, and it appearing that the consolidation of said properties in the City of Mansfield will promote the public convenience, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, the Commission is satisfied that its consent and authority for such sale and purchase of property, and for the retention of the existing physical connection, or connections, between applicants' system, with the establishment of such new connections as may be necessary, and the interchange of toll service thereby, should be granted.

And the Commission, coming now to fix and prescribe rates, tolls, charges and rentals for the furnishing of telephonic service in the City of Mansfield under the sole ownership and management of The Mansfield Telephone Company, and taking into consideration the fact that certain innovations and changes must be made in operating customs and practices and that extensive improvements will be required before a complete unification of the telephone systems may be consummated, finds that, pending the expiration of such necessary period of experiment and readjustment, the facts essential to a determination of the reasonable and just rates for such unified service can not be developed, and does, therefore, now find and determine that, for a period of six months following the acquisition of the property of the Central Union Telephone Company in the City of Mansfield, and the tying together of the two properties with a sufficient number of trunk lines to permit of the expeditious interchange of communications by the subscribers attached to each, the schedule of rates and charges of The Mansfield Telephone Company now on file with this Commission and in effect shall be the reasonable and just rates and charges to be maintained and followed by The Mansfield Telephone Company for the furnishing of telephonic service in the City of Mansfield, upon the expiration of which period this Commission shall make further in-

quiry and investigation and take such further and other proceedings herein as will fix and prescribe the reasonable and just rates and charges thereafter to be maintained and imposed by said company for the furnishing of such service. It is, therefore

Ordered, That the said Central Union Telephone Company be, and hereby it is authorized to sell and convey to The Mansfield Telephone Company, the exchange property in and about the City of Mansfield, Ohio, together with certain pole lines and toll circuits appurtenant thereto, as more fully set out and described in a statement, marked "Exhibit A", appended to the application herein, which statement hereby is made a part of this order by reference; and said The Mansfield Telephone Company hereby is authorized to purchase said property and consolidate the same with its present facilities. It is further

Ordered, That for the period of six months following such purchase of said property and the tying of the same to its existing system with a sufficient number of trunk lines to provide for and permit of an efficient interchange of service between said properties, The Mansfield Telephone Company may impose, charge and collect rates and charges not in excess of the rates and charges set forth and contained in its schedule now on file with this Commission. It is further

Ordered, That, upon the expiration of said period of six months, said The Mansfield Telephone Company shall file with this Commission a statement, in full detail, of the revenues and expenditures from the operation of its Mansfield properties, together with a report of the nature and adequacy of its service, and a statement of its actual and proposed expenditures for the extension and betterment of its service and facilities, at which time this Commission will fix and determine a schedule of just and reasonable rates thereafter to be maintained and charged for the furnishing of service by a completely unified property, as provided by law, and this cause hereby is continued, for the receipt and consideration of such reports and the making of such further and other orders as may be necessary herein, to the first day of May, 1920. It is further

Ordered, That said The Mansfield Telephone Company and the said Central Union Telephone Company be, and hereby they are authorized to retain the physical connection, or connections, now existing between their respective systems, to establish such other

and further connections as may be necessary, and to universally interchange toll business as provided by law. It is further

Ordered, That schedules be filed in conformity with the foregoing provisions of this order. It is further

Ordered, That the finding hereinbefore set forth as to service shall not be binding upon this Commission in any future proceeding involving said matter.

3

No. 1652—In the Matter of the Application of The Union Savings Bank and Trust Company, as Trustee for the First Mortgage Note Holders of The Cincinnati and Columbus Traction Company, to Permanently Abandon and Discontinue the Service and Operation of Said Company, and to Dismantle its Railroad by Removing the Rails, Ties, Poles, Wires, Overhead Construction and all other Property, and Disposing of the Same Including Substations, Real Estate, Buildings, Machinery and Rolling Stock.

(Dated October 27, 1919.)

Entry Denying Application for Modification of Order and Sustaining Motion to Deny the Same.

This day, after full hearing and argument by counsel, this matter came on for further consideration upon the application, by the applicant herein, for a modification and amendment of the order made and entered herein as of date August 28, 1919, and the motion of the protestants hereto, to dismiss the aforesaid application:

Upon consideration whereof, and being fully advised in the premises, the Commission finds that said application should be, and hereby it is denied, and said motion to dismiss such application hereby is sustained.

To which order of the Commission, denying its said application, the applicant herein, by its attorneys of record, then excepted and here now excepts, and its exceptions here are noted of record.

ATTORNEY GENERAL

Under the Provisions of Amended Section 2419 General Code, There is a Very Wide Discretion Vested in the County Commissioner in the Determination of Necessity and Propriety for Incurring Expenses by Way of Postage in the Administration of the Several County Offices. Affirmative Exercise of Such Discretion Under and in Accord With the Provisions of This Section Suffices as an Authorization for Incurring the Charge for Postage. The General Provisions of Said Amended Section 2419 General Code Must be Construed With Due Reference to the Special Provisions of the Statute and Therefore Must be Held Not to Include the Subject of Automobiles.

No. 706—(Opinion Dated October 17, 1919.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of your inquiry relative to the application of the provisions of Section 2419 G. C. as recently amended, your inquiry being as follows:

“We desire to call your attention to the amendment of section 2419 in House Bill 524, passed by the Legislature April 17, 1919; approved by the Governor May 15, 1919; and filed in the office of the Secretary of State May 17, 1919, and would ask your written opinion as to whether the postage that this section permits the county commissioners to purchase for the use of county officers must be limited to the mailing of such documents as the law requires to be mailed?

And further, if under the provision for ‘equipment,’ as used in said section, the county commissioners may purchase an automobile for any of the county officers?”

Section 2419 G. C., to which you call attention, as amended in H. B. 524 (108 O. L.) at the current session of the general assembly, is as follows:

“Sec. 2419. A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery

and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all rooms, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

In considering your question relative to the extent of the authorization to provide postage, I am constrained to observe that the authorization by the terms of the enactment is not limited to postage for mailing of documents elsewhere in the law specifically "required" to be mailed; but on the contrary, this provision in the amendment of Section 2419 G. C. must be regarded as a substantive authorization in itself, obviously intended to vest a discretion in the county commissioners.

True, the statute may not be invoked as authority for incurring expense for postage otherwise than in connection with the official business of the several county offices, but as to matters incident to the administration of the official business of the office, the authority to determine the necessity and propriety of incurring expense by way of postage to be provided for out of public funds is vested in the county commissioners; in other words, the statute authorizes the charge for postage when in a reasonable exercise of judgment and discretion the county commissioners determine same to be necessary "for the proper and convenient conduct of such offices."

You are therefore advised that there is a very wide discretion vested in the county commissioners in the determination of necessity and propriety for incurring expense by way of postage in the administration of the several county offices, and that affirmative exercise of such discretion under and in accord with the provisions of this section of the statute suffices as an authorization for incurring the charge for postage.

Your further inquiry as to the effect and application of the provision of said section relative to "equipment" in relation to the purchase of automobiles for the use of county officers raises a question which challenges a most careful consideration.

In addition to the provision that the county commissioners shall "provide all the equipment * * * as the county commissioners may deem necessary for the proper and convenient conduct of such offices," the scope of the grant is till further augmented and enlarged by the ensuing language, "and such facilities as will

result in expeditious and economical administration of the said county offices." The term "equipment" is one of broad significance and is defined by the new Standard Dictionary, as:

"Whatever constitutes an outfit or preparation for some special purpose."

Webster's Dictionary defines the term "equipment" as:

"Furniture, habilaments, apparatus."

By the language of the section of the code under consideration, the commissioners are authorized to provide the equipment they shall deem necessary for the proper and convenient conduct of the county offices, which primarily would appertain to the necessary furnishings, fixtures and provisions in and about the respective offices as would be requisite in the proper conduct of the business to be administered therein, but to the extent that the conduct of such offices may involve activities outside of the walls or location constituting the official place of business, the scope of the authorization to provide equipment would not seem to be exhausted in providing things of the character above noted.

But in addition the purpose and intention to extend the grant of power beyond the mere provision for furnishings and office fixtures, etc., is evidenced by the further authorization to provide "such facilities as will result in expeditious and economical administration of said county offices." This language is broad enough to extend to the entire activities incident to the administration of the several offices, and here again a wide discretion is vested in the county commissioners in the determination of the propriety or necessity of the adoption of the particular facilities for the expeditious and economical administration of the offices.

The term "facility" is defined by the Standard Dictionary as:

"Something by which anything is made easier or less difficult; an aid; advantage or convenience."

The term is defined by Webster as:

"That which promotes the ease of any action or course of conduct; advantage; valuable aid; assistance."

From a consideration alone of the broad language of the statute, it might well be argued that the authorization to the commissioners to "provide all the equipment, * * (they) may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices" would empower the commis-

sioners to purchase automobiles when in their judgment the circumstances and conditions warrant.

However, it must be noted that special provision has been made in relation to the subject of purchasing automobiles for the use of county officers, and this fact being considered, it is then to be determined what influence such special provision should have in the construction of the provisions of Section 2419, *supra*.

Section 2412-1 G. C., enacted in 1917, provides for the purchase of automobiles for the use of the county commissioners and county sheriff, in order to facilitate the transaction of the county business; while by Section 7200 G. C., also enacted in 1917, the county commissioners are authorized to purchase, hire or lease automobiles, motorcycles or other conveyances for the use of the county surveyor and his assistants when on official business.

In both of said sections last cited certain regulatory provisions are embodied, constituting to some extent a restriction upon the exercise of the power. For example, under Section 2412-1 G. C., the purchase of machines can only be made with the approval of the common pleas court, and both the number of such machines and the amount to be expended therefor are subject to the approval of the court, and certain provisions are made, in this and the second section above mentioned, relative to the lettering of the machines and the use to which they may be devoted. So that such legislation is in the nature of a special or specific provision for the procuring and the use of automobiles by county officers, while the application of Section 2419 G. C., under consideration, to the matter of the purchase of automobiles, would be referable to its broad and general terms.

In *Columbus vs. Kauffman*, 8 O. N. P. 231, it was said:

"General statutes are read as silently excluding from their operation the cases which have been provided for by special laws."

In *Railway vs. Elyria*, 14 O. G. C. (W. S.) 344, the court, in considering the question of authority of the village to enter into certain contracts by virtue of a provision of the general statutes, said:

"Such contracts are authorized under certain circumstances by the other sections referred to. Having legislated particularly upon the subject, the general power granted by the legislature should not be amplified by judicial interpretation, '*expressio unius est exclusio alterius*'."

In *City of Cincinnati vs. Connor*, 55 O. S. 82, the court said:

"It is an equally well established rule, that the provisions of a statute are to be construed in connection with all laws in *pari materia*, and especially with reference to the system of legislation of which they form a part, and so that all the provisions may, if possible, have operation according to their plain import."

In consideration of the rule announced by the decisions cited, and in view of the special legislation empowering county commissioners to purchase automobiles only for particular county officers and under stated conditions and regulations, it is held that the general provisions of Section 2419 G. C. must be construed with due reference to the special provisions and therefore must be held not to include the subject of automobiles as an object of the legislation.

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Bonds of a Municipality Situated Outside of Ohio, and Promissory Notes Given by Individuals who are Non-Residents of Ohio, Are Subject to Inheritance Tax in This State When Found in a Safety Deposit Vault in Ohio Where They Constitute Part of the Estate of a Decedent Who Was a Resident of a State Other Than Ohio. However the Mere Finding of the Evidences of Intangible Property in This State Affords no More Than a Presumption That the State Has the Right to Impose the Tax Under the Decision Cited. If Stocks of Corporations are Permanently Kept in This State They are, on that Account Alone, in Respect of Their Succession Taxable in This State. However This Question Must be Regarded as Doubtful.

No. 715—(Opinion Dated October 20, 1919.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: In your letter of September 29th you submit certain inquiries as corollary to those submitted in your previous letter of September 15th answered of even date herewith. The following points are raised by the Commission:

"Are bonds of a municipality situated outside of Ohio subject to inheritance tax in this state when found in a safety deposit box in Ohio where they constitute part of the estate of a decedent who was a resident of a state other than Ohio and other than that in which the municipality issuing the same is situated?

2. Are promissory notes given by individuals who are

non-residents of this state subject to the same tax as above when found in this state and when they constitute part of the estate of a non-resident decedent?

3. Are certificates of stock issued by a foreign corporation subject to similar tax when found in this state and when they constitute part of the estate of a non-resident decedent "

In the other opinion referred to the authorities from other states relative to your first question are set forth. In addition to these there is the express holding of Ferris, J., in *Matter of Speers*, 4 N. P., 238. This case arose under the collateral inheritance tax law, which, without attempting a definition of the term, imposed a tax upon "all property within the jurisdiction of this state" in respect of its succession. The facts as stated by the judge were as follows:

"It is represented that one Elizabeth Speers died testate, a resident of Kentucky, devising by her will her entire estate to various persons in several amounts; that about ninety thousand dollars worth of real estate belonging to said decedent, was located in this county, and that a personal estate of about eighty thousand dollars, represented by bonds, notes, mortgages and money on deposit in banks of the city of Cincinnati, was, by the will, directed to be paid to persons who could not have received the same except for the terms of the will."

Further, in the course of the opinion the judge discloses the information "that the bonds, stocks, notes and evidences of debt (were) in the private box of Mrs. Speers, in the vault of the safe deposit company, in Cincinnati, for safe keeping"; and the contention was made by her executors that that fact "did not give any of these values a situs for taxation other than that of the owner, and that the credit in bank was of such a character as to be incapable of a legal situs, apart from the person of the owner." Relying upon the decision in *State vs. Dalrymple*, 70 Md. 294, and distinguishing *Orcutt's Appeal*, 97 Pa. St., 179, Judge Ferris came to the following conclusion:

"The application asking for a direction to the executors to return this property for taxation should be granted and such proceedings will be had in accordance therewith."

This case affords the only available precedent in this state and should be the basis of such administrative rulings as are necessary to raise the questions mentioned by you and bring them before the courts properly for decision. It is clearly a precedent under the

present tax for the reason that the present law is certainly not narrower in its definition of what constitutes "property within this state" than the old law was.

In principle this decision answers your first and second questions in the affirmative.

However, there is one general qualification which must be made; the mere finding of the evidences of intangible property in this state affords no more than a presumption that the state has the right to impose the tax under the decisions cited. Such presumption is probably rebuttable by showing that the presence of the paper evidence in the state is merely temporary, transitory or accidental.

See—In re Romaine, 127 N. Y. 80;

In re Enston, 113 N. Y. 174.

See also—Buck vs. Beach, 206 U. S., 392.

Your third question seems not to have been involved in *Re Speers*, supra. It is rendered more doubtful by the fact that the courts in New York, which in decisions cited and sustained the taxation of bonds and other evidences of debt kept in the state, have not applied this rule to non-resident stock in a foreign corporation, though found within the state.

Matter of Whiting, 150 N. Y. 27.

In the other opinion attention has been called to the interesting manner in which the judges of the Court of Appeals of New York divided on the series of cases reported in 150 New York. Vann, J., announcing the opinion of the court in the Whiting case, supra, (though personally dissenting from a part of it) employed the following language:

"Augustus Whiting, a resident of Newport, Rhode Island, * * * at the time of his death * * had money on deposit in a bank in this state, and owned certain bonds and certificates of stock that were found in a box rented by him in a safe deposit vault in this state. The stocks and bonds were issued partly by domestic and partly by foreign corporations * * *. All except the stock of foreign corporations were included in the appraisement, which was sustained by the surrogate and by the appellate division. The theory upon which the supreme court, by a divided vote, proceeded to judgment, was that the written instruments were physically within the state, and constituted property here subject to taxation. They were regarded as tangible, and apparently as in the nature of chattels. I think this is a sound conclusion, warranted by the Romaine Case, * * * I think, moreover, that the written in-

struments issued by domestic corporations, including their bonds and the interests represented by them, are subject to a succession tax, independent of the fact of their physical presence in this state * * * . The main use of certificates is for convenience of transfer, and they are treated by business men as property for all practical purposes. They are sold in the market, transferred as collateral security to loans, and are used in various ways as property. * * * They are the only evidence of transfer required by the corporations issuing them in order to make the actual transfer on the books. There is obvious propriety in subjecting the instrument of transfer to a transfer tax when it is left in this state for safe-keeping. It is subject to the jurisdiction of our laws, and hence is within the intent of the transfer tax act. * * *

A majority of my associates, however, are of the opinion that the United States bonds, although physically present in this state, are not subject to a transfer tax. By their direction I announce, * * * that the certificates of stock in question as well as all of the bonds, except those issued by the United States, were properly held by the courts below subject to taxation under the transfer tax act on account of their physical presence in this state."

The head-note of the case, however, expressly excepts the certificates of stock of foreign corporations, and it is apparent that inasmuch as the lower courts had held those exempt and the executors and trustees had appealed, no question was before the court respecting the stock of foreign corporations. The question therefore is left in doubt by this decision.

As remarked by Messrs. Gleason and Otis, in their work on Inheritance Taxation, (p. 250):

"The reasoning of modern authorities would support such a tax when the certificate is within the jurisdiction of the taxing power."

The authors cite *People ex rel. vs. Reardon*, 185 N. Y., 531, where quotation is made from the very language of Judge Vann above quoted. The earlier New York case of *Matter of James*, 144 N. Y. 6, may be distinguished on the ground that the statute was at that time of narrower interpretation.

People vs. Griffith, 245 Ill. 532, interpreting a statute based on the earlier New York statute, and following in *re James*, held that neither stocks nor bonds of foreign corporations found in safety deposit boxes in Illinois were subject to the Illinois law. This decision, however, was expressly based by the court on the doctrine of adopting by reference, it appearing that the Illinois law was

like the New York law was at the time it was interpreted in the James and Romaine cases, and that the change in the New York law and the consequent change in judicial interpretation thereof worked by the decisions found in 150 New York took place after the Illinois legislature had acted. This principle would not hold here. If anything, the reasoning of the cases found in 150 New York would apply to the Ohio statute.

For the purpose of administration it is the advice of this department that if stocks of corporations are permanently kept in this state they are, on that account alone, in respect of their succession taxable in this state. As stated, this question must be regarded as doubtful, but it would seem to be proper to raise it for judicial determination in this way.

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"Maintenance and Repair" as Mentioned in Section 3373 General Code, Does not Include "Improving" or "Resurfacing" in the Sense in Which These Words are Used in Section 3298-5 General Code, and if the Resolution is Adopted Under Said Section 3298-5 General Code, for Improvement or Resurfacing the Work Must be Done Upon Contract as Provided in Section 3298-15f General Code, and not Under the Optional Plan Mentioned in Section 3373 General Code.

No. 689—(Opinion Dated October 11, 1919.)

Hon. Chester A. Meck, Prosecuting Attorney, Bucyrus, Ohio.

Dear Sir: The receipt is acknowledged of your letter reading as follows:

"I would like your opinion in regard to the following matter:

Section 3298-5 of the General Code provides as follows:

"The township trustees may without the presentation of a petition, take the necessary steps to construct, reconstruct, resurface or improve a public road or part thereof * * *."

Section 3373 of the General Code provides:

"In the maintenance and repair of roads the township trustees may proceed either by contract or force account."

It is now a question with me as to what is included under the terms, 'Maintenance and repair.' Does that include the improving of public roads or the resurfacing of a public road as provided in Section 3298-5? In other words, suppose a

resolution was passed unanimously under Section 3298-5 General Code and the different steps were taken to 'resurface and improve' a public road and assessments were made against the real estate abutting upon said improvement and money was borrowed on a bond issue, could this money simply be put in the road funds of the township and used by the township trustees without letting the contract by competitive bidding, for the reason that it was for the 'maintenance and repair' of roads and that Section 3373 gives them the right to let it without competitive bidding?"

Said Section 3298-5 reads:

"The township trustees may, without the presentation of a petition, take the necessary steps to construct, reconstruct, resurface, or improve a public road, or part thereof, as hereinbefore provided, upon the passage of a resolution by unanimous vote declaring the necessity therefor. The cost and expense thereof may be paid in any one of the methods provided in section 3298-13 of the General Code, as may be determined by the township trustees in said resolution."

Said Section 3373 opens with the provision quoted by you, "in the maintenance and repair of roads, the township trustees may proceed either by contract or force account", and then goes on to make provision for letting of contract if the trustees decide to proceed upon contract, and also to make provision as to the manner of force account work if the trustees elect to pursue the force account method.

The answer to your question is found in a consideration of the context of said two sections. The first of them, Section 3298-5, is part of a series (3298-1 to 3298-15n) authorizing township trustees "to construct, reconstruct, resurface or improve any public road * * * under their jurisdiction", and providing a complete proceeding in conformity with which the authority so granted may be exercised. Included in such proceeding are the matters of petition, making of plans, hearing of claims for damages, apportionment of cost as between township and landowners, assessment of property, levying of tax for township's share, issuing of bonds in anticipation of collection of such tax, and letting of contract on competitive bids after insertion of notice in newspaper. The words, "without the presentation of a petition" as used in Section 3298-5, do not have reference to a proceeding separate from that which has just been described; they are intended to confer on the trustees, in the absence of a petition, authority to undertake the proceeding de-

scribed. That such is the intent of the statute plainly appears from its use of the words "as hereinbefore provided", which can only refer to the several sections immediately preceding Section 3298-5,—said several sections having reference to general power in the trustees to proceed with the improvement and to the first step to be taken when a petition is filed; and further, plainly appears by reference to the next following section, which recites that the trustees "shall determine by resolution by unanimous vote, if acting without petition, and by a majority vote, if acting upon a petition, the route and termini of such road, the kind and extent of the improvement," etc.

Section 3373 is part of an entirely different series of statutes, namely, Sections 3370 to 3376, providing for the maintenance, repair and dragging of roads in their township by township trustees. For that purpose, provision quite extensive in character are made, including the provision above quoted giving the option to the trustees of proceeding by contract or force account. We find in the above mentioned series of statutes (3298-1 to 3298-15n) of which Section 3298-5 is a part, a distinction between improvement work that is done under authority of that series of sections, and improvement work that is done under Sections 3370 to 3376; for in Section 3298-15d the following language appears:

" * * * * For the purpose of providing by taxation a fund for the payment of the township's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, resurfacing or improving roads under the provisions of section 3298-1 to 3298-15 inclusive of the General Code and for the purpose of maintaining, repairing or dragging any public road, or roads, or part thereof, under their jurisdiction in the manner provided in sections 3370 to 3376 inclusive of the General Code, the board of trustees of any township is hereby authorized to levy annually a tax not exceeding three mills upon each dollar of the taxable property of said township."

An evident reference to the work contemplated by Section 3370 to 3376, as distinguished from Sections 3298-1 to 3298-15n, may also be found in Section 3298-18, which reads in part:

"Sec. 3298-18. After the annual estimate for each township has been filed with the trustees of the township by the county surveyor they may increase or reduce the amount of any of the items contained in said estimate and at their first meeting after said estimate is filed they shall make their levies for the purpose set forth in the estimate and for the

purpose of creating a fund for dragging, maintenance and repair of roads, upon all the taxable property of the township outside of any incorporated village or city, or part thereof therein situated, not exceeding in the aggregate two mills in any one year upon each dollar of the valuation of such taxable property." * * *

Clearly, then, in this situation, the two sections you have in mind are not to be taken as in *pari materia*, but are to be read, Sections 3298-5 as relating to construction, reconstruction, resurfacing or improvement in the sense of a fully planned and definite construction having permanency as its object, and Section 3373 as relating to maintenance and repair in the sense of keeping a highway in condition for travel. Instances may arise, of course, wherein adequate maintenance and repair involve in some degree both reconstruction and resurfacing; hence, the views herein expressed will not be understood as implying that Section 3373 and its accompanying sections are to be construed as excluding reconstruction and resurfacing to the extent necessary in the proper maintenance or repair of a highway as directed in said last named sections.

Your inquiry is therefore answered by the statement that "maintenance and repair" as mentioned in Section 3373 General Code, does not include "improving" or "resurfacing" in the sense in which those words are used in Section 3298-5 General Code, and that if a resolution is adopted under said Section 3298-5 for improvement or resurfacing, the work must be done upon contract as provided in Section 3298-15f General Code, and not under the optional plan mentioned in Section 3373 General Code.

SUPREME COURT

MOTION DOCKET

10294—Olive Wiley, Admx., vs. Board of County Commissioners of Sandusky county et al. Motion for an order directing the Court of Appeals of Sandusky county to certify its record. Sustained.

10310—The Connecticut General Life Insurance Co. vs. Gertrude Galt Richardson. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

10311—The Colonial Savings Bank & Trust Co. vs. J. W. Worst. Motion for an order directing the Court of Appeals of Sandusky county to certify its record. Overruled.

10312—The Cleveland Ry. Co. vs. Charles Burlanek. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10313—The Cleveland Ry. Co. vs. Charles Burlanek. Motion by defendant to dismiss petition in error in cause No. 16423 on the general docket. Sustained.

10315—Barbara Warren vs. The State of Ohio. Motion by defendant for leave to file petition in error to the Court of Appeals of Washington county. Overruled.

10316—Kaufman Koppel vs. Ferdinand Bader, Sheriff. Motion by plaintiff for an attachment in contempt and an injunction, in cause No. 16338 on the general docket. Overruled.

10317—Edward Bushnell, Trustee, et al. vs. The C. C. C. & St. L. Ry. Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10318—T. A. Routson, Admr. vs. Martin W. Jackson et al. Motion for an order directing the Court of Appeals of Montgomery county to certify its record. Overruled.

10319—Sarah J. Hurr, Admx. vs. Joseph E. Dunipace. Motion for an order directing the Court of Appeals of Wood county to certify its record. Overruled.

10320—The Victor Rubber Co. vs. Clara Robbins, Admx. Motion for an order directing the Court of Appeals of Clark county to certify its record. Sustained.

10321—City of Dayton vs. Charles A. Dille, Admr. Motion for an order directing the Court of Appeals of Montgomery county to certify its record. Overruled.

10322—The Higbee Company vs. Walter Jackson. Motion by plaintiff for leave to file briefs out of rule in cause No. 16383 on the general docket. Sustained.

10323—Pennsylvania Company vs. Michael Hart. Motion by defendant to strike pleadings and record from the files in cause No. 16378 on the general docket. Overruled.

10324—Frank Colletti vs. The State of Ohio. Motion for leave to file petition in error to Court of Appeals of Summit county. Overruled.

10326—The Cleveland National Bank vs. Mary E Barry et al. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10327—George Carrel, Auditor, et al. vs. The State, ex rel. Sanford Brown et al. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

10328—J. E. LaDow, Trustee, et al. vs. Lella A. Chase. Motion for an order directing the Court of Appeals of Richland county to certify its record. Overruled.

10330—The City of Newark, by etc. vs. The Public Utilities Commission of Ohio et al. Motion by plaintiff and defendants to consolidate Causes Nos. 16428 and 16429 on the general docket. Sustained.

SECRETARY OF STATE

NEW CORPORATIONS

Beck-Fairlawn Development Co., Akron, \$60,000. John L. Handy, K. Hasenzahl, J. Zimmerman, V. W. Surber, J. C. Musser.

Eberling Machine Sales Co., Cleveland, \$10,000. Britton T. Day, Max P. Goodman, Sterling P. Day, Charles M. Eberling, A. L. Dietz.

Orban-Hunt Co., Cleveland, \$23,000. S. H. Miller, A. J. Halle, L. Flatau, B. R. Kohn, J. Wertheimer.

Pythian Castle Co., Fremont, \$10,000. A. A. Norwood, B. F. Colvin, Carl F. Miller, O. E. Johnson, F. E. Siegenthaler, E. A. Fouché, E. J. Carter.

Summit Floor Surfacing Co., Akron, \$10,000. H. O'Harrow, H. L. Myers, Harry Eaton, E. E. Jones, R. R. Corwin.

Wooster Implement Co., Wooster, \$20,000. F. C. Stillinger, Charles L. Schaffter, J. F. Jones, O. P. Byers.

National Razor Manufacturing Co., Fremont, \$25,000. R. D. Petty, C. A. Ream, Wm. H. Schwartz, W. A. Heyman, A. C. Yingling.

Nuera Laboratories, Salem, \$34,500. L. E. King, Vesta S. King, Elizabeth A. King, R. T. Curtiss, John L. King.

Marsh Manufacturing Co., Cincinnati, \$25,000. D. W. Rudisell, H. S. Starkey, Sargent Marsh, Karl L. Brown, August J. Scheper.

Manufacturers' Tire Distributing Co., Ashtabula, \$20,000. Nathaniel Barsky, Edward Keller, Joseph Krohngold, Emil Krohngold, E. L. Perewé.

Middletown Hotel, Middletown, \$500,000. John Gibson, Jr., Daniel Epelsheimer, Jr., James W. Ash, M. S. Johnston, Charles R. Rock.

Ewing-Sterling Co., Steubenville, \$75,000. George T. Ewing, W. C. Sterling, A. G. Lee, L. B. Peterson, Nelson B. Miller.

Homestead Realty Co., Cleveland, \$13,000. Wm. Howell, L. E. Rice, R. E. Day, Paul R. Brown, M. F. Trampenau.

Kenneth Realty Co., Cleveland, \$10,000. Abe L. Freeman, Albert A. Woldman, Ben O. Ruby, Katherine Freeman, Benjamin Feinsilber.

B. & O. Oil & Gas Co., Monroeville, \$10,000. Thomas W. Latham, John C. Heter, E. W. Armstrong, J. F. Henninger, E. M. Alberts.

Ohio Pants and Specialties Mfg. Co., Toledo, \$10,000. Jacob E. Liegerman, Max Tucker, Harris Kass, Max Reinstein, S. Strulovita.

Cleveland Distributing Co., Cleveland, \$10,000. Arthur A. Neiger, Edward Blee, Louis H. Bush, Jay B. Goodman, P. Kuederle.

Springfield Engineering Co., Springfield, \$25,000. Edw. E. Burkhart, J. E. McAdams, Charles D. Heald, Wm. C. Pickrell, F. A. Lewis.

Ohio Body & Blower Co., Cleveland, \$550,000. T. H. Horsett, Leslie Nichols, T. H. Jones, W. T. Kinder, James P. Wood.

Home Supply Co., Ansonia, \$25,000. Wm. Rapner, H. C. Coppess, V. W. Duncan, C. C. Katrow, Ray Ramsberger.

Observation Sedan Top Co., Cleveland, \$100,000. Ben S. Wickham, A. L. Welsch, E. P. Wenstenhaver, H. E. Werner, M. L. TeLoeken.

La Rose Drug Co., Cleveland, \$100,000. W. C. Merrick, Alfred Kelley, Neil P. Beall, Warren M. Briggs, Chas. Follett.

Franz Foundry and Machine Co., Akron, \$400,000. C. Franz, John A. Britain, W. H. Parry, J. M. Alderfer, C. W. Franz.

Burrough Bros. Mfg. Co., Cleveland, \$500,000. Ralph Frericks, M. G. Spaulding, W. W. Smith, J. W. Fiscus, Joseph J. Andrassy, F. T. Roosa.

Victory Burner Co., Cleveland, \$10,000. C. P. Diemer, F. L. Zimmerman, E. C. Diemer, C. C. Zimmerman, D. Flosheinz.

Willard Elks Club Co., Willard, \$10,000. C. J. Robinson, E. J. Langhurst, E. K. Bell, E. M. Forbes, Chas. Crawford.

Magnesite Stucco Builders' Supply Co., Toledo, \$10,000,000. Thomas E. Corn, William H. Cook, Clifford Tall, Juanita Rittenhouse, Edward H. Ray.

Fayette Credit Bureau Co., Washington C. H., \$3000. George A. Robinson, Edward Fite, O. S. Craig, Jess W. Smith, H. H. Boggs.

Sunset Beach Co., Cleveland; \$30,000. E. R. Cross, Edward G. Danust, K. T. Siddall, Quay H. Findley, John H. Schultz.

People's Realty Co., Cleveland; \$25,000. H. S. Chauncey, W. J. Clark, P. O'Connell, George W. Goods, Robert E. Hodge.

H. H. Howard Building Co., Cleveland; \$25,000. H. H. Howard, G. O. Farquharson, H. M. Singer, J. W. Myers, H. M. Hubbard.

Jennigs Sales Co., Dayton; \$5000. Howard H. Hockhold, J. M. Powe'l, Vincent K. Hilton, Murray E. Smith, Charles C. McCune.

Progressive Tool & Engineering Co., Dayton; \$25,000. William A. Thompson, H. W. Bonbright, Edward A. Reese, Ada N. Thompson, Mani C. Bonbright.

Kileville Lighting Co., Kileville, \$10,000. H. M. Kile, Frank Cary, E. Hauck, H. H. Orr, L. J. Meredith.

Inter-City Radio Co., Cleveland, \$25,000. L. C. Splith, O. O. Vrooman, H. O. Mierke, L. A. O'Neil, H. M. Dyer.

McGrayel Lumber Co., Toledo. \$25,000. F. C. McGrayel, J. L. McGrayel, J. W. Lane, Frank H. Geer, Frank G. Aigrisse.

Dayton Retail Merchants' Association & Credit Co., Dayton, \$15,000. O. W. Kehm, Wm. F. Oelman, C. I. Frey, H. C. Hegman, H. S. Shelton, N. W. Mearick, H. C. Delscamp, L. L. Crowl, W. L. Stonebarger, Harry P. Cappel, Robert J. Elder, P. L. Lotz, Sam Kress, Frank A. Wright.

Cleveland Surgical Supply Co., Cleveland, \$10,000. Frances D. Clark, Fred Burke, Edward N. Conrad, Chas. A. Harris, Alfred Clum.

Francis Oil & Gas Co., Logan, \$50,000. E. H. Francis, Charles Williams, John S. Krieg, C. T. Ducazy, M. E. Campbell.

Elyria Industrial Development Co., Elyria, \$250,000. C. E. Lozier, C. H. Cushing, T. T. Robinson, A. R. Jones, John C. Parsch.

R. A. Flowers Co., Cleveland, \$10,000. Frank A. Flowers, Ed. Cruzen, John P. Bartlett, George E. Cruzen, Wm. Hartwell.

Stonecreek Brick Co., Stonecreek, \$170,000. D. G. Moomaw, W. F. Demuth, F. B. Larimore, James L. Doney, Charles Bears.

Lima Drill Press Co., Lima, \$50,000. Wm. Roush, A. C. Eddy, C. C. Gilliland, F. A. Eddy, E. L. Adler.

Grant Tool & Gage Co., Cleveland, \$15,000. Samuel Quist, Eugene J. Salzer, Ferdinand W. Bachman, Lad E. Krejci, Wm. H. Hagan.

The Stebler Clothiers Co., Cincinnati, \$300,00. Albert A. Stebler, Jacob K. Kelgman, Frank O'Hearn, Edith M. Leffler, Albert Schneider.

Toy Kraft Co., East Liverpool, \$30,000. George Heisler, Anna Heisler, C. M. Bence, Parry L. Rigby, Arthur Rigby.

Increases

Wainright Ice Machine Co., Cincinnati, \$50,000 to \$100,000.

Enterprise Lumber Co., Cincinnati, \$40,000 to \$75,000.

Dyke Equity Exchange Co., Dyke Siding, \$10,000 to \$25,000.

Mahoning Valley Water Co., Youngstown, \$300,000 to \$400,000.

Goodyear Tire & Rubber Co., Akron, \$100,000,000 to \$200,000,000.

Fremont Motor Sales Co., Fremont, \$36,000 to \$50,000.

When Stores Co., Columbus, \$400,000 to \$1,000,000.

Sales Service Co., Cincinnati, \$25,000 to \$50,000.

Morrison Dry Goods Co., Delaware, \$40,000 to \$75,000.

National Printing & Engraving Co., Cleveland, \$2,000 to \$10,000.

The People's Building & Savings Co., East Liverpool, \$1,000,000 to \$2,000,000.

Stewart Motor Truck Sales Co., Dayton, \$10,000 to \$30,000.

Vulcan Coal Co., Steubenville; \$40,000 to \$440,000.

New Home Building Co., Columbus; \$5000 to \$25,000.

Puritan Products Co., Youngstown; \$60,000 to \$110,000.

R. L. Graham Co., Lima; \$75,000 to \$100,000.

Pharis Tire & Rubber Co., Newark, \$100,000 to \$1,000,000.

City Taxicab & Garage Co., Lima, \$10,000 to \$25,000.

Friedman De Vay Knitting Co., Cleveland, \$10,000 to \$50,000.

Shawnee Amusement Co., Lima, \$50,000 to \$65,000.

Watson Engineering Co., Cleveland, \$50,000 to \$250,000.

United States Chemical Co., Greenville, \$50,000 to \$100,000.

Decrease

Perfect Edge Co., Cincinnati, \$50,000 to \$25,000.

PUBLIC UTILITIES COMMISSION

No. 1807—In the Matter of the Application of The Newcomerstown Gas Company for Authority to Issue and Dispose of Its Common Capital Stock of the Par Value of \$5000. Prayer Granted.

(Dated November 19, 1919.)

This day this matter came on for final consideration upon the application of The Newcomerstown Gas Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue additional common capital stock of the par value of five thousand dollars, the proceeds arising from the sale thereof to be used to purchase supplies and equipment for additional gas wells.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds, from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the issue of applicant's said capital stock is reasonably required and the money to be procured thereby is necessary for the construction, completion, extension and improvement of its facilities, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Newcomerstown Gas Company be, and hereby it is authorized to issue its common capital stock of the par value of five thousand dollars (\$5000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further,

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose and no other, to-wit: The purchase of material and equipment for additional gas wells. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 761—In the Matter of the Application of The Cleveland & Sharon Rapid Transit Railway Company for Authority to Issue \$75,000.00 Capital Stock and \$195,000.00 First Mortgage, Six Per Cent Thirty-Year Bonds. Second Supplemental Order.

(Dated November 19, 1919.)

This day, after full hearing, (due notice of the time and place of which was given to all parties in interest), this matter came on for further consideration upon the second supplemental application of said The Cleveland & Sharon Rapid Transit Railway Company asking such further modification and amendment of the order, made and entered herein as of date December 27th, 1916, and as modified by the supplemental order made and entered herein as of date May 19th, 1919, as will now, among other things permit the use of a part of the proceeds of the securities heretofore herein authorized to be issued and disposed of, to pay for the property of the electric light plant at Burton, Ohio, the purchase of which, by the applicant, was duly consented to and authorized by order, this day made and entered in proceeding No. 1734.

Upon consideration whereof, and being fully advised in the premises, the commission finds that the proceeds arising from the sale of applicant's common capital stock of the par value of five thousand dollars are reasonably required and necessary to discharge the applicant's indebtedness incurred for and on account of the acquisition of the electric light plant at Burton, Ohio. It is, therefore,

Ordered, That the order, made and entered herein as of date December 27th, 1916, and as modified May 19th, 1917, be, and hereby it is further modified and amended to provide and permit of the use of the proceeds arising from the sale of applicant's common capital stock of the par value of five thousand dollars (\$5000.00), to be sold for the highest price obtainable, but not less than the par value thereof, be devoted to and used for the payment of the consideration for the electric light plant at Burton, Ohio, the purchase of which, by applicant, was duly consented to and approved by the order this day made and entered, in proceeding No. 1734. It is, further

Ordered, That the applicant make verified report to this commission of the issue and disposition of its capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

And the commission, coming now to consider the authority heretofor granted herein, viz: For the issue and disposition by the

applicant, in addition to the foregoing common stock, additional such capital stock of the par value of ninety-five thousand dollars and first mortgage, six per cent bonds of the principal sum of two hundred thousand dollars, it is further

Ordered, That the authority heretofore granted said The Cleveland & Sharon Rapid Transit Railway Company to issue and dispose of common capital stock of the par value of ninety-five thousand dollars, and first mortgage, six per cent bonds of the principal sum of two hundred thousand dollars, to procure funds with which to acquire right-of-way and construct and equip a certain line of electric interurban railway, be, and hereby it is suspended pending the further order of this commission. It is further

Ordered, That jurisdiction of this proceeding be specifically retained for the reception and consideration of applications for the withdrawal, in whole, or in part of the foregoing suspension.

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No. 1801—In the Matter of the Joint Application of The Chesapeake & Pontiac Telephone Company of West Virginia and Deal & Hunt Telephone Company. Prayer Granted.

(Dated November 10, 1919.)

This day this matter came on for final consideration upon the joint application of The Chesapeake & Potomac Telephone Company, (a corporation duly organized and existing under the laws of West Virginia and duly authorized to do business in the state of Ohio), and the Deal & Hunt Telephone Company, (an unincorporated telephone company, operating a telephone system in Guernsey, Noble, Monroe and Belmont counties, Ohio, with its principal office and place of business at Batesville, Ohio), asking the consent to and approval by this commission, of the making, said applicants, of a certain contract or agreement, providing, among other things and in chief, for the retention of the physical connection now existing between the applicants' respective systems and the interchange of toll business thereby.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by the

retention of said physical connection and the interchange of toll business by the applicants and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for the retention of said physical connection and the interchange of toll business thereby should be granted. It is, therefore,

Ordered, That said The Chesapeake & Potomac Telephone Company of West Virginia and the said Deal & Hunt Telephone Company, be, and hereby they are authorized to retain the physical connection now existing between their respective systems and to continue to interchange toll business as provided by law. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

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No. 1780—In the Matter of the Application of The Xenia Water Company of Xenia, Ohio, for the Consent to and Approval of the Sale of Its Property and Assets, Except Its Book Accounts, to the City of Xenia, Ohio. Prayer Granted.

(Dated October 30, 1919.)

This day after due notice to all parties in interest, this matter came on to be heard and was heard upon the application of The Xenia Water Company, (a corporation organized and existing under the laws of Ohio), asking the consent to and approval, by this commission, of the sale of all its property and assets, except its book accounts, to the municipal corporation of Xenia, Ohio.

Upon consideration whereof, and being fully advised in the premises, and it appearing that the electors of said city have regularly adopted a proposal for the issuing of bonds to acquire the water works plant heretofore owned and operated by the applicant and that agreement has been made by the applicant and said city for such purchase and sale of said property, the commission finds, for the purposes of this proceeding, that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for such sale of said property should be granted. It is, therefore,

Ordered, That said The Xenia Water Company be, and hereby

it is authorized to sell and convey to the city of Xenia, Ohio, all of its property and assets, except its book accounts. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicant file with this commission a schedule cancelling its currently effective schedule of rates and changes, rules and regulations for the furnishing of its product.

✽

No. 1792—In the Matter of the Application of Thomas McGovern, B. B. Seymour and J. D. Cummins, for an Order Authorizing and Approving an Issue of Stocks and Bonds by a Corporation to be Organized to Acquire the Railroad and Property Formerly of The Pennsylvania and Ohio Railway Company. Prayer Granted.

(Dated October 28, 1919.)

This day this matter came on to be heard, and was heard upon the application of Thos. McGovern, B. B. Seymour and J. D. Cummins, (a committee representing the holders of the bonds of The Pennsylvania and Ohio Railway Company, which bondholders have acquired, by purchase at judicial sale, all the property, rights and franchises of said The Pennsylvania and Ohio Railway Company), asking consent and authority of the commission to the issue, by a corporation, hereafter to be organized by said bondholders under the name of The Pennsylvania and Ohio Traction Company, when and as the same is organized, of common capital stock of the total par value of \$400,000.00 and first mortgage, six per cent bonds of the principal sum of \$100,000.00, said capital stock and bonds to be delivered to said purchasers of said property and assets of The Pennsylvania and Ohio Railway Company in full and final payment of the consideration therefor, the payment and discharge of certain prior liens and to provide a working capital and fund for the extension and improvement of said facilities of the approximate sum of \$42,710.82.

Upon consideration whereof, and being fully advised in the premises, and it appearing that the property so to be acquired by said corporation (when and as the same is organized) was formerly capitalized to the extent of \$700,000.00 and was bonded to the further sum of \$700,000.00, while the capitalization and bonded indebtedness now proposed is materially less than formerly borne by the property, and the applicant having averred its ability to dem-

onstrate to the satisfaction of this commission that the value of said property and assets is not less than the sum of \$500,000.00, the commission is satisfied that, subject to the production of such proof as to the value of said property, the aforesaid plan of reorganization of the capitalization and indebtedness of said property is feasible, and, unless something now unforeseen arises, should be consummated. It is, therefore,

Ordered, That the proposed plan of the aforesaid Thomas McGovern, B. B. Seymour and J. D. Cummins, for the capitalization of the corporation, proposed to be organized by them under the name of The Pennsylvania and Ohio Traction Company, for the purpose of acquiring, maintaining and operating the property, rights and assets heretofore of The Pennsylvania and Ohio Traction Company, and more lately acquired, at judicial sale, by the bondholders of said last named corporation, be, and hereby it is approved, subject to the production, at the further hearing hereof, of evidence demonstrating that the value of said property, rights and franchises is not less than the sum of \$500,000.00. It is further

Ordered, That this proceeding be continued for the reception and consideration of the application hereafter to be filed by said The Pennsylvania and Ohio Traction Company (when and as the organization of the same shall have been consummated) for specific consent and authority to issue and dispose of its capital stock and mortgage bonds.

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No. 1708—In the Matter of the Joint Application of The Deal and Hunt Telephone Company and The Farmers' Telephone Company.

(Dated November 10, 1919.)

This day this matter came on for final consideration upon the joint application of The Deal and Hunt Telephone Company (an unincorporated telephone company, operating a telephone system in Noble, Belmont, Guernsey and Monroe Counties, Ohio, with its principal office and place of business at Batesville, Ohio), and The Farmers' Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio, with its principal office and place of business at Quaker City, Ohio), asking the consent to and approval, by this Commission, of the making, by said applicants, of a certain contract or agreement, providing, among other things and in chief, for the retention of the physical connection now existing between the applicants' respective systems and the interchange of toll business thereby:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by the retention of said physical connection and the interchange of toll business by the applicants and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for the retention of said physical connection and the interchange of toll business thereby should be granted. It is, therefore,

Ordered, That said The Deal and Hunt Telephone Company and said The Farmers' Telephone Company (of Quaker City, Ohio), be, and hereby they are authorized to retain the physical connection now existing between their respective systems and to continue to interchange toll business as provided by law. It is further

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this Commission in any future proceeding involving said matters, nor shall anything herein be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service.



**No. 1760—The Citizens Telephone Exchange Company, Applicant,
vs. The Metamora Telephone Company, Defendant.**

(Dated November 18, 1919)

Finding

By the Commission:

The Citizens Telephone Exchange Company, a corporation of Metamora, Ohio, filed its application with the Commission against the Metamora Telephone Company of Metamora, defendants, praying for a Certificate of Convenience and Necessity granting it the right to own and operate a plant for the furnishing of telephone service in and around the village of Metamora, Ohio, in territory now occupied by the Metamora Telephone Company, for the reason that the service furnished by the latter company is grossly inade-

quate and inefficient. The application was made under the provisions of Section 614-52 General Code:

"Section 614-52. No telephone company shall exercise any permit, right, license or franchise that may have been heretofore granted but not actually exercised or that may hereafter be granted to own or operate a plant for the furnishing of any telephone service, thereunder in any municipality or locality, where there is in operation a telephone company furnishing adequate service, unless such telephone company first secures from the commission a certificate after public hearing of all parties interested that the exercising of such license permit, right or franchise is proper and necessary for the public convenience."

The application was resisted by the defendant, The Metamora Telephone Company, and a voluminous record consisting of testimony and exhibits introduced before the Commission, depositions taken locally and briefs of counsel fully presents the situation.

Metamora is a village of about five hundred inhabitants, situate in the northeast corner of Fulton county, eighty rods south of the Ohio-Michigan State Line. The exchange of the Metamora Telephone Company was constructed in 1903, and it has continued since that time to serve the people of the territory with a plant that had a consistent growth with the community, until at the time these difficulties arose it had property with a reproduction value of \$23,050, a full metallic system, switchboard, cables, inside and outside terminals, fuse blocks and cypress pole lines reaching out into the country and accommodating various farmers lines. The subscribers increased until there were 232 farmers stations and 99 in the village of Metamora proper, or a total of 331. Surrounded on the North, East, South and West by other telephone exchanges, this number seemed to be about the limit of the territory at the time complained of.

The only other telephone service or connection in the village of Metamora was that of the Ogden Mutual, a company located several miles across the line in Michigan, which had a farmers line dropping down into Metamora, where it was connected with the exchange of the Metamora Company, which rendered switching service to the 18 farmers upon this line at a switching charge of 30 cents per month. For some reason not apparent in the record, this situation became unsatisfactory to the Michigan Company, which cut the Metamora end of this farmers line, disconnecting it from the exchange of the Metamora Telephone Company.

As some of these Michigan farmers had transacted part of

their business in the village of Metamora, the severing of connection with them offered an opportunity to some of the business-men of Metamora who had small-town differences with other business-men of Metamora, who were interested either as stockholders or otherwise in the Metamora Telephone Company, and these parties of the first part proceeded to invite the Ogden Mutual Company of Michigan into the village of Metamora, Ohio, tendering it a vacant business-room for its switchboard and promising it certain telephone subscribers, who as soon as the line was installed proceeded to give up the service of the Metamora Telephone Company and installed that of the Ogden Mutual. These same parties then made a demand upon the Metamora Telephone Company for free service with various exchanges surrounding the Metamora territory. This having been refused by the Metamora Telephone Company, the parties aforesaid entered upon an active campaign to secure for the Ogden Mutual the subscribers of the Metamora Telephone Company, by personal solicitation, conference with farmers at public meetings, the offering of cheap rates and switching charges, and articles written for and published by the local newspaper, signed "Metamora Business-men." The effect of this propoganda was very soon felt by the Metamora Telephone Company, which on or about August 15, 1917, filed its petition in the Court of Common Pleas of Fulton County, Ohio, against the Ogden Mutual Telephone Company; the Metamora Lumber Company, Reuben A. Smith, the Metamora Hardware Company, and Robert J. Finn and Wesley Kahle doing business as the Metamora Hardware Company, defendants, praying for an injunction restraining the defendants from furnishing telephone service within its territory. The case proceeded through the Common Pleas Court to the Court of Appeals of Fulton County, where on July 3, 1919, the temporary restraining order was made perpetual and the defendants were restrained and enjoined from furnishing or receiving any telephone service in the locality "without first having obtained a permit so to do from the Public Utilities Commission of the State of Ohio."

The parties of the first part thereupon proceeded to incorporate the Citizens Telephone Exchange Company and made their application for Certificate of Convenience and Necessity to this Commission. In the meantime not the slightest attention seems to have been paid by anybody to the injunction of the court. The Citizens Exchange Company was organized by the same parties who had been assisting the Ogden Mutual Telephone Company, and

the same parties proceeded in their active propaganda. The result was that at the time of the submission of this case, the Metamora territory, small for one company, was occupied by the Metamora Telephone Company with an up-to-date plant, no complaint having been rendered this Commission of the service furnished by it, but which found its lines being paralleled and duplicated by a makeshift concern with its wires hung on high tension trolley poles in the village, and on saplings in the country. The 99 village subscribers of the Metamora Telephone Company had been reduced to 54; the 232 farmers stations reduced to 150, or a total of 204, while the Citizens Telephone Exchange Company had secured 51 subscribers in the village of Metamora, most of whom had been subscribers to the Metamora Telephone Company; and 105 farmers stations, the majority of whom had been former subscribers to the Metamora Telephone Company. The community was divided into two hostile camps, into one of the other of which every telephone user was forced by banking, business or social pressure, and the Citizens Telephone Exchange Company was coolly asking to invade the territory of the Metamora Telephone Company on the ground that the service of the latter company had become inadequate by reason of the loss of subscribers, which had so been solicited away from it.

If these methods may be approved, then there is not a telephone company in the State of Ohio, no matter how great its investment, how modern its plant or how satisfactory its service, safe from ruinous attacks. We do not believe that Section 614-52 was intended to approve such methods. On the other hand it is our understanding that this section was enacted to put a stop to the sort of destructive competition revealed by this record.

If the service of any telephone company occupying a certain territory is not adequate or its practices are in any way in violation of law, the remedy is not to attempt to install another plant, thereby so depleting the revenue of both that neither can afford to furnish adequate service; but to apply to this Commission setting forth wherein the existing company is not performing its full duty to the public, and asking for an order requiring it to do so. A certificate of convenience and necessity should be applied for only when the plant of the existing company is not adequate to meet the demands of the public and cannot be made so.

Finding no necessity for the issuance of a Certificate of Convenience to the applicant company, its application therefor will be denied.

ATTORNEY GENERAL

A Non-Charter Governed City May Buy Water Works From a Private Company by Authorizing and Issuing Bonds for the First Payment and Contracting to Pay the Balance at Fixed Intervals From the Earnings of the Water Works. It May Also Legally Issue Bonds to Make the First or Initial Payment and Issue Mortgage Bonds Secured Only Upon the Utility and its Revenues to Cover the Balance.

No. 800—(Opinion Dated November 19, 1919.)

Bureau of Inspection and Supervision of Public Offices, Columbus,, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"We are enclosing copy of communication to Mr. B. F. Robinson, President of Council, Bucyrus, Ohio, and respectfully request your written opinion upon the following matters:

1. In a non-charter governed city, may a municipality buy a water works from a private company by authorizing and issuing bonds for the first payment and contracting to pay the balance at fixed intervals from the earnings of the water works?

2. May a municipality legally issue bonds to make the first or initial payment and issue mortgage bonds secured only upon the utility and its revenues to cover the balance?

3. Is there any legal way to purchase such water works, making only a partial payment?"

Acknowledgment is also made of the receipt of a copy of the communication from your Bureau to the president of the city council of Bucyrus, Ohio. It is suggested that while your questions are separately stated and numbered, they are all intimately affected by the consideration of and answer to question No. 1.

Sections 4, 5 and 12 of Article 18, section 11 of Article 12, section 3939, 3940, 3806 and 3809 are pertinent.

Section 4, Article 18, in part provides:

"Any municipality may acquire, construct, own, lease and operate * * * any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants."

Section 5 provides that any municipality exercising the powers granted in section 4, "shall act by ordinance, and no such ordinance shall take effect until after thirty days from its passage." Then follows provision for a referendum on such ordinance.

- Section 12 of Article 18 is as follows:

"Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

Section 11 of Article 12, adopted at the same time as the above quoted sections (1912), provides that no bonded indebtedness of a political subdivision of the state shall be incurred unless

"in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their final redemption at maturity."

Section 3939 (106 O. L., 536) authorizes the city council in the manner therein stated, to issue and sell bonds

"in such amounts and denominations, for such period of time, and at such rate of interest, not exceeding six per cent per annum, as said council may determine, and in the manner provided by law, for any of the following specific purposes: * * *

(11) For erecting or purchasing water works for supplying water to the corporation and the inhabitants thereof."

Section 3940 limits the amount of such bond issue to "one per cent. of the total value of all property in such municipal corporation." At this point it may be observed that prior to the adoption of section 12, article 18, municipal corporations, by delegated power from the general assembly, in sections 3939 and others, already had the authority to acquire and operate water works and to issue bonds in payment thereof. The amendment, however, does not enlarge the power but rather places it beyond the control of the general assembly and is a direct grant of power not from the general assembly, which theretofore was necessary see Board of Health

vs. Greenville, 86 O. S., 24), but is a direct grant from the people in "a new distribution of governmental power, * * * made by the people," as held in *Fitzgerald vs. Cleveland*, 88 O. S., 360.

This direct grant, then, from the people of Ohio, contains express authority to acquire a water plant. Authority to issue bonds for the entire cost price of construction or purchase was also granted by sections 3939 and 3940 up to one per cent. of the taxable property. By the terms of section 3949 this limitation may be exceeded where the net income of the plant is sufficient to meet the sinking fund requirements.

The question of the validity of this section, because of its apparent conflict with section 11, Article 12, may be noted (but not decided) in this, that said section 11 prohibits the incurrence or renewal of any bonded indebtedness, unless in the legislation authorizing it "provision is made for levying and collecting annually by taxation an amount sufficient to pay interest and redeem the bonds at maturity." It is to be noted that the constitutional requirement is that this sinking fund shall be levied and collected "annually by taxation." Section 3949 contemplates the creation and maintenance of such sinking fund from the revenues of the water plant. However, section 12, Article 18, adopted by the people at the same time section 11 was adopted authorizes the issuance of the bonds beyond the one per cent. limitation, where the payment of such bonds is secured only by the utility and its income. The same apparent conflict exists between sections 11 and 12, unless the latter, being more special in its nature, is to be regarded as an exception to the former. Such a conflict is avoidable also by construing the special or limited indebtedness of the municipality on the mortgage bonds issued under section 12 and section 3949 General Code as not being a "bonded indebtedness" in the sense in which that term is used in section 11. This latter construction is adopted by this department. This does not affect or impair the application of section 11 to bonded indebtedness, and gives meaning to section 12. In view of the authority contained in the last section, so far as the present question is concerned, it is unnecessary to further discuss or determine the implied repeal of section 3949 by the adoption of section 11, article 12. To keep in mind the effect of the adoption of these constitutional amendments, it must be remembered that they are self executing and apply to "any municipality", whether charter or non-charter.

Section 3806 (Burns law) in part provides:

"No contract * * * involving the expenditure of money, shall be entered into * * * unless the auditor * * * first certifies to council * * * that the money required for such contract * * * is in the treasury to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose."

With this preliminary survey of the law applicable to your inquiries, they may now be considered separately.

In question 1 you inquire:

"In a non-charter governed city, may a municipality buy a water works from a private company by authorizing and issuing bonds for the first payment and contracting to pay the balance at fixed intervals from the earnings of the water works?"

This project may be said to involve two principal acts:

(1) The issuance of bonds for the initial payment under section 3939, and (2) a contract for deferred payments out of the net income.

The authority to issue bonds for water works (see further discussion in answer to your second question) clearly exists and, subject to the limitations of section 3940, the requirements of the constitution as to the sinking fund and general laws as to the tax rate limitations, authority to contract for the purchase is equally clear, but it may be said that this authority is subject to the impediments of section 3806 (supra).

In the scheme contemplated, the deferred payments are not to be made from funds raised by taxation, but are to come from the net income of the utility. It is at once obvious that the auditor cannot certify that such money is in the treasury or in process of collection. But is such certificate necessary?

In *Kerr vs. Bellefontaine, et al.* 59 O. S., 464, the court held that that part of the statute which limits its application to contracts, ordinances or orders, for or involving "the expenditure of money", applies only to money raised by taxation. Holding that the statute did not apply in that case, the court held:

"The fund from which the plaintiff is entitled to satisfaction of his demand, is not raised by taxation. It is derived from the operation of the gas works and made subject to the order of the board, whose authority is so limited that they can make valid contracts only for appliances and supplies for the gas works to which the fund is devoted."

In *Comstock vs. Nelsonville*, 61 O. S., 288, the rule is more clearly and definitely stated. As appears on page 294 of the opinion.

"The section is general in its terms, but the object of the general assembly evidently was to compel municipalities to have the money in the treasury before appropriating or spending it. This can only apply to money raised or to be raised, by a levy on the general tax list of the municipality."

And again on page 296 it is said that this section (then 2702) did not apply,

"for the further reason that by necessary implication said section has reference to money of the municipality, that is, money raised, or ultimately to be raised, by a levy on the general tax list, and does not cover or refer to moneys of individuals, that is, money to be raised by an assessment on the property along the improvement."

On page 297 this holding is characterized as protecting "the treasury and the general taxpayer and at the same time enables needed local improvements to be made without detriment to the municipality and is in accordance with the intention of the general assembly in passing the Burns law."

In the contemplated scheme to carry out the second part of the project, no money raised by levy on the taxable property of the municipality is used for the deferred payments, and in view of these and other decisions, construing the Burns law in this regard, this department is of the opinion that on the facts as contemplated in your inquiry, the Burns law is inapplicable.

It is therefore concluded that in the manner pointed out, and subject to the limitations indicated, the proper answer to your first question is an affirmative one.

Your second question is:

"May a municipality legally issue bonds to make the first or initial payment and issue mortgage bonds secured only upon the utility and its revenues to cover the balance?"

Consideration of the purpose of the sections and constitutional provisions above quoted and considered, suggests no reason why the municipality may not utilize either of these methods in acquiring a water plant. This seems free from doubt. But the question as presented here is whether the authority and power of both of these separate provisions may be utilized in part and conjunctively. On one side it may be claimed that the power to issue bonds under sec-

tions 3939 et seq. and section 12, Article 18 of the Constitution, carries with it authority to issue bonds to provide part payment for a water works plant. This on the theory that the lesser power is included in the greater power. On the other side of this question it may be claimed that to legally exercise the authority contained in section 3939, viz., to issue bonds for the purpose of "erecting or purchasing water works", the bond must be for the entire cost of such water works, and that this section contemplates that the issuance of such bonds, of itself, will result in the acquisition of such utility and that a complete and exclusive means of such acquisition is here provided. This section, however, relates to the grant of powers to municipalities; in it the legislature was concerned with the purposes or objects for which power to issue bonds was there granted. It may be plausibly argued that the latter adoption of section 12, Article 18, supra, was not without significance in this connection. This section, adopted at the same time as sections 4 and 5 of Article 18, rather indicates that bonds up to the bond limitation may be issued under section 3939, and if this does not raise sufficient money, the rest of the money necessary may be raised by issuance of mortgage bonds secured only by the property and its revenues. This section reads:

"Provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality."

Would this not seem to indicate that with authority to acquire water works clearly granted, without restriction (except as to the extent of bond issues) in previously enacted sections, it was thus intended to provide for the acquisition of such water works in cases where the bonds issuable under section 3939, et seq., were insufficient, by providing the balance of the funds requisite to such acquisition could be raised by mortgage bonds secured only on the property and its income, as above pointed out? No decision on this precise question has been found, but the case of *Platt vs. Toledo*, 21 O. C. D., 305 (12 O. C. C. (n. s.) 279) is similar in principle. In that case it was claimed, as stated on page 306:

"It is said that there are two substantial reasons why this issue should be enjoined; first * * * and also that there is no authority given by law for the issuance of bonds to construct anything but a completed bridge."

The court held on page 307:

"We are disposed * * * to hold that the council * * *

may authorize contracts to be entered into and provide the means for their fulfillment, for the completion of parts of such structures as the statute says they may provide means to pay for, by the issue of bonds or otherwise. We think that this contention that the council was powerless to issue bonds for the construction of a bridge without making provision for the construction of a draw or other method of completely spanning the streams, should not be sustained and we adhere to the decision made in this respect upon the other trial between the same parties."

The Ohio circuit court reports do not disclose the reporting of the other trial between the same parties. In this case it was claimed that the amount of the bond issue (up to the bond limit) was so manifestly insufficient to complete the bridge that it fairly raised the question of the power of council to issue bonds for an incomplete part of a specifically authorized improvement, viz., the construction of a bridge. The foot note, page 305, indicates that a petition in error was dismissed by the supreme court in *Platt vs. Toledo*, 54 Bull., 106. In this case (page 306), referring to the former circuit court's holding on this branch of the plaintiff's case, the court say:

"In that case, the opinion in which was announced by Judge Kinkade, it was said, in substance, that the court saw no reason to hold that the contention of the plaintiff in that regard was correct."

With clear authority granted to acquire and issue bonds for a water works, no reason is apparent to this department at this time why the power to acquire and issue bonds for the whole consideration for such water works does not include and carry with it the power to issue bonds for such part thereof as council deems necessary for the attainment of such purpose, and consistent with this conclusion, supported by the Toledo case, this department is of the opinion, in the absence of judicial decision to the contrary, that the answer to your second query should be in the affirmative.

Because of the intimate relation of your third question to question one, it is considered that the discussion and conclusion reached in the latter question settles the third question and necessarily results in an affirmative answer thereto.

Where Tax Collections by the County Treasurer are Deposited in Banks and Held From 60 to 100 Days Without Payment of Interest, Such Bank is Liable For an Accounting to the County and May be Required to Pay to the County the Amount Which Such Accounting Would Show to be Due the County For the Use and Possession of Such Funds.—If the County Treasurer Wilfully Violates Any Provision of the Depositary Laws and Wilfully Neglects or Refuses to Perform the Duties Imposed Upon Him of Depositing the Public Money in the Designated Depositary, and for Unlawful Purposes Deposits Said Money in an Unauthorized Bank, Where Such Public Money Draws Interest, He Has in Law Controverted Such Money to His Own Use and he and His Bondsmen are Liable to the County for the Amount of the Increment to the Public Funds.—Where Such Funds Are Deposited With the Bank by Agreement With the Treasurer and Such Bank is the Legal Depositary, and Such Bank Receives Such Money With Actual or Imputed Knowledge of Their Public Character, Not for the Purpose of Transportation, but With the Agreement and Intention to Hold Such Money For a Period of Time, Clearly Beyond the Time Necessary for Transportation and Such Funds are not Placed or Credited in the Regular Depositary Account, But Are Placed in a Non-Interest Bearing Account and Used and Commingled With the Bank's General Deposits, the Bank is Liable for Interest Thereon. The Rate of Interest and the Time to be Charged Are Discussed But Not Decided.

No. 761—(Opinion Dated November 7, 1919.)
Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen. Acknowledgment is made of the receipt of your request for the opinion of this department, as follows:

"Examiners of this department have discovered in certain counties, that where the treasurer received taxes under the provisions of sections 2746 to 2749, General Code, inclusive, that it has been the practice to permit the collections made at these places to be deposited with banks of deposit located at the place where collections were made and to permit the funds so collected to remain in said banks for periods of from 60 to 100 days without the bank paying any interest for the use of said funds and without the treasurer having reported same as tax collections in his daily statements to the auditor under Section 2642 General Code.

Question 1. What is the responsibility of the bank as to paying interest for the use of these funds?

2. What is the responsibility of the treasurer who permits these funds to remain in said bank as to the question of interest thereon?

3. Where a bank under the circumstances mentioned above is the regularly designated depository of county funds and the funds so left with this bank from such collections are not credited to the depository account, what is the responsibility of the bank as to interest on such funds?"

Sections 2715 and 2745 G. C., relating to county depositories, and sections 2746 and 2749, relating to tax receiving offices, are pertinent to your inquiry. Without quoting all of these depository statutes, it is deemed sufficient to set forth such parts thereof as may show the general intent of the legislature with reference to the safekeeping of the county's funds.

Section 2715 in part provides:

"The commissioners in each county shall designate in the manner hereinafter provided a bank or banks * * * as inactive depositories, and one or more of such banks * * * as active depositories of the money of the county."

Section 2715-1 in part provides that the deposits in active depositories "shall at all times be subject to draft for the purpose of meeting the current expenses of the county," and that deposits in inactive depositories shall remain "until such time as the county treasurer is obliged to withdraw a portion or all of the same and place it in the active depository * * * for current use." In passing it may be noted that funds which are not needed for current expenses are those required to be deposited in a different kind of a depository than those funds which are needed for current expenses.

Section 2722 provides that no award on proposals for depositing public money shall be made until the statutory security is given under this section and sections 2723 and 2724.

Section 2729 fixes the time or final condition, viz., the acceptance of the depository undertaking and hypothecation of bonds upon which such bank or banks become depositories.

Section 2736, as amended in 103 O. L., 562, provides that after the treasurer is notified by the commissioners of the selection of a depository,

"such treasurer shall deposit in such bank or banks * * * as directed by the commissioners and designated as inactive depositories to the credit of the county all money in his possession, except such amount as is necessary to meet current demands, which shall be deposited by such treasurer in the active depository or depositories. Thereafter, before noon of each

business day, he shall deposit therein the balance, if any, remaining in his hands after having paid out of the receipts of the preceding business day, in cash, warrants presented to him for payment during such day, except as hereinbefore provided."

Section 2737 in part provides:

"All money deposited with any depositary shall bear interest at the rate specified in the proposal on which the award thereof was made, computed on daily balances, and on the first day of each calendar month * * * such interest shall be placed to the credit of the county, and the depositary shall notify the auditor and treasurer, each separately, in writing of the amount thereof before noon of the next business day. All such interest realized on the money belonging to the undivided tax funds shall be apportioned by the county auditor to the state, * * * or assessing districts in the proportion that the amounts collected for the respective political divisions * * * bear to the entire amount collected by the county treasurer for such undivided tax funds and deposited as herein provided."

Section 2743 provides that:

"An officer of a county having a county deposit who wilfully violates any provision of this chapter relating to county depositaries, or wilfully neglects or refuses to perform any duties thereby imposed upon him, shall be fined not more than ten thousand dollars * * * or be imprisoned in the penitentiary not less than one year nor more than ten years, or both."

Section 2746 authorizes the county treasurer to open a tax receiving office, in each township whenever in his opinion it is necessary and, as to such office, provides:

"Such office shall be in a city or village in which is located a bank of deposit."

Section 2748 provides that

"For the purpose of transportation, the county treasurer may deposit temporarily in any bank of deposit located at such place of collection any money received in the payment of taxes."

This section also requires that such bank receiving temporary deposits for the purpose of transportation, must give security, subject to the approval of the county commissioners.

From the facts stated in your letter, supplemented by personal conference, it is learned that your question relates largely to a practice in connection with the deposit of money received in payment of taxes and which belongs, until settlement and distribution, to

the undivided general tax funds. Questions 1 and 2 are understood to relate to such deposits being made in non-depository banks.

These questions require that sections 2746 to 2749, inclusive, be construed with the county depository sections, above quoted or referred to.

The first part of section 2715 is free from doubt and under it the county commissioners are given no discretion as to selecting and maintaining a county depository, the statute reading that they "shall designate in the manner hereinafter provided a bank or banks" as depositories for the money of the county.

Section 2736 leaves no doubt about the imperative duty of the treasurer, after making the deposits which should go into the inactive depository, depositing all the rest of the money in his possession "before noon of each business day."

Section 2737 is free from ambiguity, providing that "all money deposited with any depository shall bear interest."

Section 2748, it must be remembered, permits the deposit only of money collected at such place of collection (where the bank is located) temporarily and only "for the purpose of transportation." The enactment of these statutes followed the decisions in the cases of *Eshelby vs. Board of Education*, 66 O. S., 71; *Glenville vs. Englehart*, 19 O. C. C., 285, and others which arose upon the acts of treasurers depositing and loaning public money to banks and claiming to own the income or interest thereof. Their purpose is to safeguard and insure the proper custody of public money, but they go further than that and require that such part of the increment of the public funds, as is agreed upon, shall inure to the benefit of the public.

Assuming the deposits made by the treasurer in such banks, located at the place where branch tax collection offices are opened, are not legally designated depositories of public funds, as required by section 2715 et seq. G. C., your first question is, "what is the responsibility of the bank as to paying interest for the use of these funds."

The case of *Eshelby vs. Board of Education*, (supra), while a case on different issues than here involved, throws some light on this question. In that case funds were deposited in a bank which was not a depository of the school district funds and interest accrued on the deposit which the treasurer claimed as his property. The case was presented to the court on the question of whether the

interest accruing upon such public funds belonged to the school district or to the treasurer and was disposed of on this reasoning:

"Since the funds belong to the school district, the ultimate question in the case is answered in favor of the defendant in error (board of education) by the elementary proposition, that in the absence of a statute or stipulation to the contrary, the increment follows the principal."

As reflecting upon the treasurer's duties, a further quotation from this opinion may be made as follows:

"The safety of public funds has been the chief object of care. For their security the law employs the character and ability of the treasurer, and the security which is afforded by his official bond."

In a suit against the bondsmen of the state treasurer, the same result was reached in the case of *State vs. McKinnon et al*, 15 O. C. C. (n. s.) 1. This case was affirmed by the Supreme Court.

Other cases awarding a recovery against the treasurer or his bondsmen for interest collected on funds illegally deposited, are found in *State vs. Bank*, 19 O. D., p. 82, *State vs. Schott, et al*, 9 N. P. (n. s.) 522.

The result of these holdings leaves no doubt as to the rights of the county and the duty and liability of the treasurer, where the money so illegally deposited has drawn interest, and there is no doubt in such cases that the bank could be required to pay such interest to the county, or, if same has been paid to the treasurer, he and his bondsmen are liable to an accounting for such interest. This, however, presents a different case from the one under discussion, for it is assumed that the funds in this case have been deposited without any understanding or agreement as to interest being paid either to the treasurer or to the county.

The case of *Franklin Bank vs. Newark*, 96 O. S., 453, is the nearest in point of any available decision. In that case the city treasurer deposited in the Franklin Bank a certain sum of money in violation of section 4294 G. C. which then provided that

"Upon giving bond, as required by council, the treasurer may, by and with the consent of his bondsman, deposit all funds and public monies of which he has charge, in such bank or banks * * * which may seem best for the protection of such funds * * *. All profits arising from such deposit * * * shall inure to the benefits of the fund."

The plaintiff in that case had not provided a depository for the

city funds and the defendant bank claimed that the deposit was made with the knowledge and consent of the city council and the bondsmen of the city treasurer, and was received by the bank under an agreement with the treasurer that no interest was to be paid on said funds or compensation charged for their safe keeping.

The city claimed that the bank had full knowledge that such funds were the public funds of the city of Newark and that the bank derived profits in loaning the same in its banking business, and plaintiff sought an accounting of the profits.

The banks in the case under consideration are not legal depositaries and, except for temporary deposits for the purpose of transportation, a deposit of county funds in such banks, without any agreement as to interest, is an illegal deposit resembling the facts in the Newark case. On page 455, after stating the issues in the Newark case, the Supreme Court stated the material facts to be:

"The issues of fact which may be regarded as material in this case were whether such funds were received upon the conditions that no compensation should be paid therefore either an interest or otherwise, and whether such funds were in fact received and at all times held by the bank as a special deposit and no profit realized by the bank from the possession and use thereof."

The trial court had found in fact that such deposit was not a special deposit and that the bank did derive a profit from the possession and use thereof, and, after quoting section 4294 (*supra*), the court laid down this general rule:

"We think it clear from the provisions of this and cognate sections of the General Code that any bank receiving funds of a municipality under the circumstances disclosed by this record, knowing the same to be the funds of the municipality, becomes a trustee and must account to the municipality for the fund so deposited and all profits arising from such deposit."

The special facts as to the deposits made in your question are not given, but in consideration of the statutes and cases above cited, a general rule may be announced that in case of such illegal deposits, if the bank knows, or by the exercise of ordinary prudence should know, that the funds deposited belong to the county, and receive the same not as a special deposit, but commingle and use the same with the other general deposits of the bank, and derive a

profit from the possession and use thereof, such bank must account for the profits arising from such deposit.

This results in an answer to your first question that the responsibility of the bank, where the facts are as above stated, is that it may be held to an accounting to the county and be required to pay to the county the amount which such accounting would show to be due the county for the use and possession of its funds.

Your second question is,

“What is the responsibility of the treasurer who permits these funds to remain in said bank as to the question of interest therein?”

His responsibility criminally would be determined by applying the provisions of section 2743 (*supra*), to the facts in each case, on the wilfulness of his neglect or refusal to perform any of the duties imposed upon him by the depositary statutes, and if the facts show beyond a reasonable doubt that the county treasurer wilfully violated any provision of these laws, or wilfully neglected or refused to perform his duties thereunder, he is subject upon conviction to the fines or imprisonment, or both, as provided in section 2743.

Section 286 G. C., as amended in 103 O. L., 508, in part provides that if an examiner's report sets forth any misfeasance or gross neglect of duty on the part of an officer, for which a criminal penalty is provided by law, the prosecuting attorney is obliged, upon the receipt of certified copy of the report, to institute criminal proceedings against such offender.

The same section provides that:

“If the report sets forth that any public money * * * has not been accounted for, or that any public money has been converted or misappropriated.”

the prosecuting attorney, upon receipt of such report, is authorized and required to bring a civil action for the recovery of such public money. Public money is defined in the same section to be “all money received or collected under color of office, whether in accordance with or under authority of any law * * * or otherwise, and all public officials * * * shall be liable therefor.”

If the county treasurer wilfully violates any provision of the depositary laws and wilfully neglects or refuses to perform the duties imposed upon him of depositing the public money in the designated depositary, and for unlawful purposes deposits said

money in an unauthorized bank, where such public money draws interest, he has in law converted such money to his own use and he and his bondsmen are liable to the county for the amount of the increment to the public funds. See *State v. McKinnon* and other cases cited in answer to your first question.

Your third question relates to such temporary depositing of county money by the treasurer in a bank which is the regularly designated depository of the county and where such deposit in the depository is not credited to the regular depository account, and your inquiry is "what is the responsibility of the bank as to interest on such funds."

Enough of the depository sections have been quoted to show that upon the acceptance of the depository proposal, the giving and acceptance of its bonds and notice from the county commissioners to the county treasurer, it is made the unmistakable duty of the treasurer to deposit the active funds of the county in such depository before noon of each business day. The depository is charged with knowledge of this law, which is read into and is a part of its depository contract.

Excepting such moneys which the county will not need for the payment of its current expenses and which must be deposited in the inactive depository, there is no provision in law whereby a lawfully designated depository of county funds may receive any of the public money of the county and place it in a separate non-interest bearing account, except as herein pointed out.

It is a known fact that during the tax paying period, and up to the time of the semi-annual settlement of the county treasurer, large sums of money are paid into the undivided general tax funds. The law provided for the computation of the interest on the county funds in an active depository on a daily cash balance basis. With the great amount of money thus paid in during the tax-paying period, the legislature realized the importance of having such undivided tax funds bearing interest on the daily balance basis, and the action of the county treasurer and county depository, in depositing such money in a separate and irregular non-interest bearing account is to defeat the manifest purpose of this act, and is nothing more or less than a plain evasion of the law.

Here the bank is the legal depository and, as your letter is understood, it has also qualified as what may be here termed "temporary depository for transportation only." It must be remembered that such bank may receive deposits in either of these capacities.

If duly received in the capacity first referred to, the liability and rate are fixed by statute and the depositary contract thereunder, and this phase may be eliminated from further discussion.

But in the latter situation there is no such contractual rate and the money is and can be received only as a special deposit; this is so from the very nature of the transaction and its legal effect under the statutes permitting such deposits. The bank in this instance receives the county's monies and holds them temporarily for transportation. In theory it must hold and transport the particular monies it receives. Under no circumstances can it legally treat them as a general deposit and use and commingle them with its general deposits.

The length of time allowed for transportation is not fixed by statute but may be determined by established banking custom, subject to special facts in particular cases, and no hard and fast rule is here made.

It may be suggested that the necessity and justification for such temporary deposit in a designated depositary would not ordinarily exist. One exception, however, may be pointed out; where such bank has already received as a regular depositary the maximum amount it could receive under its agreement upon qualifying under sections 2748 et seq. it could receive such temporary deposits.

Where, however, by agreement with the treasurer, such bank receives such money with actual or imputed knowledge of their public character, not for the purpose of transportation but with the agreement and intention to hold such money for a period of time clearly beyond the time necessary for transportation, and such funds are not placed or credited in the regular depositary account, but are placed in a non-interest bearing account, and used and commingled with the bank's general deposits, its liability is certain.

In such a case, entertaining no doubt as to the bank's liability, these questions remain as to the measure of the bank's liability: (a) what rate of interest is recoverable, and (b) from what time shall such rate be charged.

Specific facts as to the particular deposits not being given in your letter, and it being understood that your questions are asked with a view of ascertaining and announcing a general rule in such matters toward the end that certain practices in this matter may be stopped, rather than at present making this opinion the legal basis for a particular finding or suit for recovery, these general

questions will be noted and tentatively considered, but not finally decided until presentation of actual facts in specific cases.

(a) As to the rate of interest, the rate finally recoverable in the Newark case, it is suggested, may not be adopted for all cases. In that case the trial court found against the bank (page 455) on accounting on the basis of "the rate of net profit realized by the bank upon its entire assets during the period said fund was on deposit." The Supreme Court held, however, that the facts constituted the bank a trustee, from which upon established principles of equity, other facts being equal, it may be claimed the trustees have wrongfully converted the money to its own use and used and commingled the funds of its cestui que trust with its own funds or with other funds controlled by it in such a way as to make it impossible to ascertain the increment thereto, that the trustee would be liable for the legal rate of interest where no rate is agreed upon, viz., 6 per cent. This claim does not appear to have been made in the pleadings in the Newark case and was not considered in the Supreme Court, so that the measure of liability fixed in that case may not be held as a precedent for all cases. Again, a trustee bank in such a case may have used and commingled such money in such a negligent and imprudent manner as to have made little or no profit thereon; in such case it would seem unsafe to hold that the cestui que trust would be bound by such negligence and imprudence and entitled only to such profits as resulted therefrom.

(b) In the consideration of the question as to the time from which such rate shall be charged, it must be noted that, (1) sections 2748 et seq. do not fix a time limit for transporting such monies. It may be observed, however, that in the ordinary course of banking in ordinary cases, this would require but a short time; (2) such money is subject to the control of the treasurer and not the bank.

The liability of the bank may depend in some (if not all) cases upon its treating such funds as a general deposit.

In a given case, where such funds are received and held by the bank as a special deposit, but not transported because of the negligence of the treasurer, no reason for the bank's liability is apparent. But if such bank receives such funds, according to law, and their transportation is delayed by reason of the neglect of the treasurer or the bank, and such funds are used and commingled as before stated, the time of such use and commingling would be the beginning of the interest bearing time.

In another case in which may be supposed, the transportation is unreasonably delayed by the bank, the interest would then be charged from the beginning of such delay. But where it is the understanding between the treasurer and the bank that such funds are not intended as such temporary deposit and it was the understanding and the intention that they were to be used by the bank as a general deposit, the interest begins from the time of the deposit.

These questions are noted (but not decided) for practical purposes in guiding your examiners in procuring pertinent facts in the process of their examinations and are reserved for final consideration as actual cases may arise and be submitted.

SECRETARY OF STATE

NEW CORPORATIONS

000. John S. King, M. M. King, G. G. Rich, E. J. Underhill, K. P. Underhill. Johnson Auto Garage Co., Cleveland; \$5000. Charles S. Shields, Clarence E. Bouldin, Frank V. Nord, John Hagen, James W. Wand.

Exchequer Realty & Investment Co., Cleveland; \$25,000. Don P. Mills, C. L. Fancher, L. M. Dreher, S. R. Klein, G. S. Hillur.

Insulation Materials Co., Cleveland; \$10,000. M. B. Kuitsteiner, W. E. Mize, A. M. Thobaben, S. G. Loeb, A. J. Loeb.

Schryver-Davis Co., Cleveland; \$10,000. R. Hall, A. Cullen, M. Clancy, W. L. Goddard, I. W. Sharp.

Bedford Grocery Co., Bedford; \$10,000. Ralph R. Snow, Oscar J. Horn, D. Y. Scott, C. L. Giersch, Joseph Hobert, Jr.

Marysville Oil Products Co., Marysville; \$100,000. Thomas H. Rowe, H. S. Townsend, Josiah Turner, F. R. Holycross, George W. Wilber.

Felberg-Simrall Co., Cincinnati; \$10,000. John C. Hermann, Herbert E. Ritchie, Louis F. Uutz, Ed Ritchie, G. A. Ginder.

Witt Building Co., Akron; \$30,000. W. W. Wagoner, F. J. Ketcher, H. J. Zimmerman, S. J. Witt, T. B. Tomkinson.

Ramsey Bros. Mfg. Co., Toledo; \$20,000. Ferdinand L. Gramling, William Rickher, A. T. Ramsey, Leo E. Guthrie, Harry W. Morgan.

Key State Bank, Nev. \$25,000. R. H. Moats, S. B. Scott, H. H. Baker, P. M. Lehman, M. A. Sell, N. R. Ganvey, C. W. Kerns, O. F. Rintner, A. P. Ridenour, Mary E. Yeagley, Mary Welker.

Warwood Oil and Gas Co., Steubenville; \$15,000. Carl C. Schaefer, Floyd R. Broady, K. R. McGreagor, Edward H. Geer, Edward D. Lucas.

Regent Amusement Co., Cleveland; \$10,000. Waldo B. Lemmon, Harry Pelatsek, Henry Newhauser, Harry Reich, Samuel F. Deutsch.

Lakewood Pythian Temple Co., Lakewood; \$20,000. T. B. Bolton, E.

F. Wolf, T. J. Curry, C. H. Houck, W. D. Cole.

Thomson Auto Specialties Co., Columbus; \$25,000. Benj. H. Thomson, S. A. Krepps, Clara E. Carter, C. C. Laird, C. C. Williams.

European Forwarding Co., Cleveland; \$1000. John E. Palmer, A. C. Hasse, Alfred F. Azla, B. Morovite, Josephine Teddings.

The Siebenthaler Co., Dayton; \$10,000. Wilber Siebenthaler, Clarence O. Siebenthaler, John D. Siebenthaler, Mary E. Siebenthaler.

Cleveland Kitchen Table Co., Cleveland; \$40,000. F. W. Goakes, A. A. Mudge, E. M. Kossin, Edgar R. Bayes, L. E. Giel.

Central Fuel Co., Cincinnati; \$50,000. B. Lee Hutchinson, Martin F. McDermott, Edward G. Avent, Jr., L. L. Randall, Frank E. Wood.

McClure Drug Co., Warren; \$40,000. William M. Carter, George T. Fillius, Harry F. Higby, Fred C. Lewis, Edward D. Clouston.

Behringer Decorative Co., Dayton; \$15,000. Ralph F. Behringer, Charles W. Shalen, Elmer K. Engle, Joseph W. Engle, William J. Lukdswitz.

Queen City Carpet Cleaning & Rug Manufacturing Co., Cincinnati; \$10,000. Harry Pleatman, James M. Malone, Charles S. Bailey, Theodore Ackerman, Robert S. Alcorn.

Cleveland Addressing & Mailing Co., Cleveland; \$10,000. Ralph Schwartzenberg, Harry L. Bracken, Harvey W. Schwartzenberg, Emma E. Braken, Harriet Schwartzenberg.

Cincinnati Publishing Co., Cincinnati; \$25,000. B. H. Bearlaer, Stanley Bachmeyer, Charles E. Deye, A. R. Ulmstneider, Jerry Clevenger.

Collins Ice Cream Co., Cincinnati; \$150,000. W. H. Collins, J. A. Meister, A. R. Collins, Arthur L. Rohan, William R. Collins.

Conneaut Pythian Home Co., Conneaut; \$1,000,000. T. J. Gough, W. W. Allen, F. L. Marsh, William Babbett, J. H. Dewey, B. E. Wright, Anton Nelson, F. W. Miller, M. R. Smith, N. B. Schaaf.

Kenton Home Building Co., Kenton, \$40,000. H. E. Pearce, Burr Finnell, Carl Price, L. S. Bixler, J. E. Gosson.

Mileth Realty Co., \$20,000. Max P. Goodman, C. F. Uhl, John Jaster, Jr., Mildred R. Jaster, Ethel S. Uhl.

Lakewood Realty Co., Lakewood, \$10,000. George H. Holzworth, William E. Brazier, R. W. Carver, Ellen L. Squire, Anna Woros.

Jamal Realty Co., Cleveland, \$10,000. Max P. Goodman, B. L. Isaacs, M. E. Blum, A. L. Dietz, A. Krajci.

K. and L. Land Co., Cleveland, \$5,000. J. A. Smith, J. W. Smith, C. E. Olds, D. M. Turner, D. M. Yarger.

Cleveland Mining & Smelting Co., Cleveland, \$10,000. Max P. Goodman, B. L. Isaacs, M. E. Blum, A. L. Dietz, A. Krajci.

North Brewster Light Co., North Brewster, \$5,000. Anton Kobletz, D. A. Young, W. D. Fairfax, Herman Glick, W. A. Wilson.

H. & C. Realty Co., Cleveland, \$10,000. Phelps Crum, P. Tritt, W. C. Graves, H. M. Benner, John H. Price.

Cedar Springs Hotel, New Paris, \$150,000. D. G. Williamson, E. S. Gordin, John W. Wolfe, C. E. Samuels, Stella Williamson.

Arthur F. Luthi Co., Cleveland, \$150,000. T. B. Bolton, E. R. Bolin, A. F. Maurer, Norton McGiffin, Louis D. Hedrick.

Will-Deane Co., Columbus, \$50,000. Guy R. Dusenberry, F. McDonnell, Jay R. Clutter, Bernard McDonnell, C. M. Johnston.

A. O. Wood Truck Sales Co., Cleveland, \$50,000. A. O. Wood, Mary S. Wood, A. E. Sutton, C. E. Mankin, Lee J. Myers.

Metropolitan Mfg. Co., Cleveland, \$25,000. Sidney S. Weltz, Marc. J. Grossman, Harry Pott, Irwin M. Losser, Fred B. Fishman.

Fourth & Market Building Co., Steubenville, \$350,000. W. A. Stewart, C. M. Linduff, C. M. Barger, J. B. McCullough, A. N. Anderson.

M-I. Co., Cleveland, \$150,000. Wm C. Keough, M. M. Roche, Frank G. Mooney, B. Brabeck, D. Lepple.

India Machine & Rubber Mold Co., Akron, \$100,000. Walter C. Wenk, Thomas Cline, Jess Letherby, Nat Williams, Russell E. Baer.

Iron Point Oil & Gas Co., Logan, \$10,000. Carl A. Rice, J. C. Hallett, L. D. Martin, W. C. Adair, A. A. Friesner.

D. L. Carpenter Co., Cincinnati, \$200,000. David L. Carpenter, Owen J. Carpenter, C. Frank Carpenter, Albert E. Patterson, Ojas E. Tipton.

Thea Realty Co., Akron, \$75,000. Walter R. Wolfsberger, Hilery H. Halsey, Anna L. Wolfsberger, Harley O. Wolsberger, Joseph Connors.

Oppenheim-Campbell Furniture Co., Toledo, \$5,000. Tracy L. Oppenheimer, Ray S. Campbell, H. L. Christopher, S. M. Dean, O. J. Smith.

Daisy Fence & Post Co., Greenville, \$100,000. Cassius A. Stoltz, G. W. Rhodes, H. P. Stocker, Thad M. Stoltz.

Ohio House Wrecking Co., Cleveland, \$10,000. H. Grohs, A. I. Powell, J. C. Frederick, P. Koederle, M. L. Harrington.

Cleveland Appliance Co., Cleveland, \$1,500. Carl F. Shuler, Katherine Murman, C. E. Curphen, Thomas P. Schmidt, E. E. Kinnison.

Adena Miners' Supply Co., Adena, \$8,000. George Watkins, Robert Stanikurcj, John Wasko, Joe Salembaski, Louis Schulski.

Spencer Home Co., Spencer, \$50,000. John B. Firestone, C. E. Bement, N. E. Butler, E. N. Brown, George E. Roberts.

A. A. Kalish Co., Cleveland, \$25,000. Samuel Milder, A. A. Kalish, B. F. Kalish, R. T. Taylor, M. E. Brumli.

Muskingum Valley Hardware Co., Beverly, \$25,000. Lonnie A. Dixon, Henry D. Johnson, Bernice Dixon, Gertrude Johnson, James A. Hart.

Berkshire Apartments Co., Toledo, \$75,000. George R. Rignagy, E. B. Wood, E. C. Rowland, Charles F. Chapman, Randolph F. Whitehead.

Windsor Savines & Loan Co., Cleveland, \$100,000. Elizabeth C. T. Miller, Edith Charlesworth, S. Gertrude B. Lee, Grace McIntyre, L. L. McCallum.

Windsor Mortgage Co., Cleveland, \$10,000. Elizabeth C. T. Miller, Edith Charlesworth, S. Gertrude B. Lee, Andrew B. Lee, L. L. McCallum.

Akron Auto Top Trimming Co., Akron, \$10,000. George C. Worl, H. E. McCroady, Forrest E. Matz, William L. Bader, John A. Headley.

Ohio Coal Service Co., Columbus, \$10,000. William H. Young, A. E. Krause, C. S. Lax, J. T. Sweazy, Harry Lewis.

Consumers' Direct Clothing Co., Cleveland, \$200,000. Edw. G. Pain-ton, Joseph A. Burkley, Horace Neff, R. C. Adolph, Henry M. Adolph.

Heightsward Co., Cleveland; \$10,000. Edward Younger, Benson McIlrath, Charles E. Clark, E. M. Sewell, A. J. Pensa.

J. I. Geiger Supply Co., Dayton; \$50,000. J. I. Geiger, G. E. Nicholas, Charles L. Ruehrer, Laura K. Geiger, Clifton Hoolihan.

Markin-Blanton Co., Ironton; \$200,000. O. D. Hayes, A. D. Markin, Ellis D. Markin, L. R. Andrews, L. P. Blanton.

Merriman Heights Realty Co., Akron; \$166,000. N. O. Mather, R. H. Nesbitt, W. B. McIntosh, J. M. Rowley, O. N. Gabriel.

Lincoln Building, Loan & Savings Co., Hamilton; \$100,000. Mark Brilliant, Lena M. Hinkel, Eugenia Brilliant, Fred A. Kinkel, Anna Brilliant.

Sheeders Oil & Gas Co., Youngstown; \$25,000. Frank C. Sexton, William C. Francis, Harry A. Allen, Joseph C. Edie, Frank S. Sheeders.

Reliable Auto Paint, Top & Fender Co., Cleveland; \$10,000. M. J. Urban-sky, C. R. McConnell, N. T. Mazence, M. L. Dillay, Harry E. Davis.

Schneider & Kent Motor Co., Cleveland; \$5000. C. B. Kent, George N. C Schneider, M. M. Felder, M. E. Reynolds, H. W. Sisson.

Maumee Tire & Rubber Co., Toledo; \$1000. H. L. Christopher, William Veach, E. Cooney, M. Bolan, C. J. Smith.

J. F. Robertson Feed Co., Steuben-ville; \$42,000. John F. Robertson, George S. Salmon, Fred P. Saunders, Ida F. Robertson, Pearl M. Salmon.

International Golf Ball Co., Newark; \$10,000. William Burke, W. K. Wob-becke, Walter Sherwood, Bernadette Winter, Roderic Jones.

Park-Home Dairy Co., Elyria; \$25,000. A. J. Robson, R. B. Struthers, Fred M. Bauer, Ralph Bauer, Alfred G. Bauer.

Home Agency Co., Akron; \$250,000. Charles L. Wirth, C. E. Falor, R. C. Hartong, E. N. Brooks, F. Colley.

Cathcart-Texas Oil Co., Columbus; \$350,000. Gerry Cathcart, Charles H. Gerrish, M. A. Fixley, William M. Ginder.

Euclid-Forty-Sixth Street Market, Cleveland; \$210,000. A. F. Counts, Charles D. Kamp, E. A. Meyers, Fred J. Sommer, Edward J. Weigel.

Stafford Lumber Co., Mansfield; \$10,000. W. D. Stafford, R. M. Stafford, B. W. Motter, Anna Motter, J. E. Slay-baugh.

Eastern States Park Co., Elyria; \$200,000. Tdward S. Sheck, Eugene Sheck, Lydia Sheck, H. B. Harris, Ver-onica Warner.

Dr. A. L. Reusing Laboratories Co., Akron; \$100,000. A. L. Reusing, D. F. Walker, Albert B. Smith, Edgar M. Williams, Mrs. R. A. Belemater.

Ensign Drug Co., Youngstown; \$10,000. C. A. Ensign, E. F. Kenney, Henry Rudge, Grace M. Haney, Laura M. Montgomery.

State Land Co., Akron; \$50,000. Jo-seph C. Zuendel, Lewis E. Rotsum, Thomas F. Mullarkey, G. H. Coroonan, Bruce W. Raff.

Roseville State Bank, Roseville; \$25,000. Winfield M. Parsens, Robert S. Smith, John F. Weaver, Samuel W. Moore, James B. Allison.

Fourth City Realty Co., Cleveland; \$10,000. C. A. Bowman, George E. Whitehouse, C. C. Silverthon, Samuel Potter Burrill, George Weymark, Wil-liam Whitehouse.

Greater Dayton Gazette Co., \$15,000. Paul R. Gruner, H. F. Rose, Geo. Neder, Helen C. Gruner, William H. Brauckman.

Ward-Cox Co., Mt. Vernon; \$10,000. Carroll Pratt Ward, Joseph T. Cox, Frances A. Ward, C. Carroll Ward, Elizabeth S. Ward,

Cummins Motor Sales Co., Toledo; \$10,000. James A. Caldwell, Charles H. Wynn, George I. Wynn, Thomas O. Cummins, Harriet K. Cummins.

West Toledo Amusement Co., To-ledo; \$50,000. Joseph O. Eppstein, Harry Cowen, Morris Krause, Thomas Gardner, Frances Hammerstein.

Lakeside Motor Co., Cleveland; \$50,000. D. J. Kinner, A. W. Halman, E. M. Chaloupka, O. J. Zinner, Albert Hendelson.

Perfection Electric Products Co., New Washington; \$150,000. J. A. Ja-cob, J. H. Donaldson, J. A. Kleinfelter, Justus Cronan, M. H. Schill.

Templar Tire & Rubber Co., Clevel-land; \$25,000. Joseph J. Konys, Jas. P. Brophy, James Giathowski, John Groezinskiy.

Ashtabula Candy Co., Ashtabula; \$10,000. William J. Rice, Walter A. Tinker, Ida M. Tinker, Grace L. Rice, Charles J. Starkey Jr.

Lux Electric Fixture & Art Mfg. Co., Cleveland; \$35,000. A. A. Schreiber, M. M. Carl, N. Guren, P. Broef, H. L. Turoff.

Goldman Audit Co., Cincinnati; \$25,000. H. H. Goldman, B. Goldman, B. K. Goldman, Herman H. Schrader, Albert Stern.

Sterling Mortgage Co., Cleveland; \$200,000. A. F. Counts, J. A. Hearn, W. S. Rymer, H. B. Mallaite, R. P. King.

First Mortgage Co., Cleveland; \$100,000. Dominick Cameron, R. R. Story, Mott G. Spaulding, E. L. Perew, J. M. Klumph.

Home System Baking Co., Defiance; \$25,000. F. Scott Kitson, Port A. Hockman, Charles Lichter, Christ Kiehl, Jr., F. J. Papenhagen.

Harvard Avenue Allotment Co., Elyria; \$20,000. E. D. Wurts, William Kilroy, J. W. Smith, Sarah K. Smith, Sadie Wurts.

Broadview-Twenty-Fifth Street Co., Cleveland; \$10,000. G. R. Cross, Edward C. Dacust, K. T. Siddall, Quay A. Findley, John R. Schultz.

Utility Products Co., Columbus; \$75,000. Stephen Stephaman, G. B. Kittle, Henry P. Howe, Forest H. Thorp, J. E. Cain.

Lake Erie Motor Co., Cleveland; \$100,000. M. L. Thomson, W. H. Savage, Mark L. McCave, Robert E. Roehm, N. I. Young.

Rummell Mfg. Co., Findlay; \$75,000. W. R. Russell, George B. Rummell, Earl D. Rummell, Harry B. Rummell, La Vergno E. Rummell.

Increases

Schuster Co., Cleveland; \$300,000 to \$600,000.

Cotter Transfer & Storage Co., Mansfield; \$25,000 to \$50,000.

Union Fireproof Warehouse Co., Akron; \$100,000 to \$500,000.

Toledo Blade Co., Toledo; \$150,000 to \$300,000.

Mid-West Box Co., Cleveland; \$250,000 to \$550,000.

Liberty Gauge & Instrument Co., Cleveland; \$15,000 to \$100,000.

Burnet Realty Co., Cincinnati; \$100,000 to \$200,000.

Odeon Building Association Co., Cincinnati; \$1,500,000 to \$3,000,000.

Jeffersonian Co., Cambridge; \$30,000 to \$100,000.

Guide Motor Lamp Manufacturing Co., Cleveland; \$300,000 to \$750,000.

Central Aluminum Co., Canton; \$10,000 to \$50,000.

O'Shaughnessy Ready-to-Wear Co., Columbus; \$50,000 to \$100,000.

Gordon Square Co., Cleveland; \$2,500 to \$350,000.

Renner Products Co., Akron; \$10,000 to \$75,000.

Rudolph Beutsch Co., Cleveland; \$25,000 to \$75,000.

Loew's Alhambra Theater, Cleveland; \$1000 to \$5000.

Loew's Liberty Theater, Cleveland; \$1000 to \$10,000.

Loew's Mall Theater, Cleveland; \$1,000 to \$90,000.

B. B. Building Co., Toledo; \$30,000 to \$37,000.

Portsmouth Telephone Co., Toledo; \$200,000 to \$300,000.

H. S. Weil Co., Cleveland, \$7,000 to \$15,000.

Arlinghaus Engraving Co., Cleveland, \$15,000 to \$50,000.

Kearns-Gorsuch Bottle Co., Zanesville, \$150,000 to \$1,500,000.

Pickett Oil & Gas Co., Columbus; \$10,000 to \$50,000.

Masonic Temple Association, Cleveland, \$150,000 to \$1,000,000.

Eclat Rubber Co., Cuyahoga Falls, \$50,000 to \$100,000.

Johnson Drug Co., Middletown, \$10,000 to \$25,000.

Oak Rubber Co., Ravenna, \$50,000 to \$75,000.

Realty Security Co., Youngstown, \$400,000 to \$800,000.

Lucre Glass Co., Brilliant, \$15,000 to \$25,000.

S. S. Dewson Co., Cincinnati, \$5,000 to \$50,000.

Stacey Brothers Gas Construction Co., Cincinnati, \$250,000 to \$400,000.

Findlay Engineering and Manufacturing Co., Findlay, \$25,000 to \$60,000.

Creswell Realty Co., Cleveland, \$10,000 to \$400,000.

Commercial Acceptance Co., Dayton, \$50,000 to \$500,000.

Decreases

Bock Bearing Co., Toledo; \$1,611,700 to \$1,582,200.

Dolomite Products Co., Cleveland; \$500,000 to \$400,000.

Monitor Oil Co., Cleveland, \$100,000 to \$1,000.

Anchor Oil & Chemical Co., Cleveland, \$10,000 to \$1,000.

Star Lubricating Co., Cleveland, \$25,000 to \$1,000.

Masonic Temple Association, Cleveland, \$200,000 to \$150,000.

PUBLIC UTILITIES COMMISSION

No. 1793—In the Matter of the Application of The Athens County Home Telephone Company, of Athens, Ohio, for Leave to Issue Certain Capital Stock. Prayer Granted.

(Dated November 24, 1919.)

This day this matter came on for final consideration upon the application of The Athens Home Telephone Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of its common capital stock of the par value of thirty-nine thousand, five hundred dollars, the proceeds arising from the sale thereof to be used, (a) \$6000.00 for the partial discharge of short term notes, aggregating \$8021.29, the proceeds of which were expended for improvements to applicant's facilities and the purchase of certain new equipment, and (b) \$33,500.00 for the partial reimbursement of applicant's treasury for the sum of \$33,667.83, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, within the five years next preceding the date of the filing of the application herein, for the construction, completion, extension and improvement of its facilities.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, (1) that the applicant now has outstanding short term notes, of the principal sum of \$6000.00, the loans procured by which were invested in additions, extensions and improvements to its plant and facilities, (2) that, between the dates January 1, 1915, and September 15, 1919, (both inclusive) the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$33,500.00, none of which was procured by the issue of stocks, bonds, notes or other evidences of indebtedness, and (3) that the issue of applicant's said common capital stock of the par value of \$39,500.00 is reasonably required and the money to be procured thereby necessary for the payment and dis-

charge of its aforesaid indebtedness and the reimbursement of its treasury for the aforesaid uncanceled capital expenditures, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is therefore

Ordered, That said The Athens County Home Telephone Company be, and hereby it is authorized to issue its common capital stock of the total par value of thirty-nine thousand, five hundred dollars (\$39,500.00), and that said capital stock be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to wit:

(a) \$6000.00 for the partial discharge of applicant's short term notes (of the principal sum of \$6021.29) the loans procured by the issue of which were expended for additions to its plant and facilities, as more fully set forth in a detailed statement, marked Exhibit A, appended to the application herein, which exhibit hereby is made a part of this order by reference.

(b) \$33,500.00 for the partial reimbursement of applicant's treasury for the sum of \$33,667.83 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom, between the dates January first, 1915, and September thirtieth, 1919), for the construction, completion, extension and improvement of its facilities, as more fully set forth in a detailed statement, marked Exhibit B, appended to the application herein, which exhibit hereby is made a part of this order by reference.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1810—In the Matter of the Petition of Central Union Telephone Company for Authority to Accept and Hold \$75,000.00, Par Value, of the Common Capital Stock of The Champaign County Telephone Company. Prayer Granted.

(Dated November 24, 1919.)

This day this matter came on for final consideration upon the application of Central Union Telephone Company (a corporation

organized and existing under and by virtue of the laws of Illinois and duly authorized to do business in the State of Ohio), asking the consent to and approval, by this Commission, of its acceptance and holding of \$75,000.00, par value, of the common capital stock of The Champaign County Telephone Company, \$45,000.00 par value thereof to represent its pro rata proportion of the assets of The Urbana Telephone Company which are to be distributed and said corporation dissolved, and \$30,000.00 par value thereof, in full satisfaction of said last named corporation's indebtedness to the applicant of such sum.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by the acquisition of said capital stock by the applicant, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the acceptance and holding of said capital stock by the Central Union Telephone Company should be granted. It is therefore

Ordered, That the said Central Union Telephone Company be, and hereby it is authorized to accept and hereafter hold seventy-five thousand dollars (\$75,000.00) par value of the common capital stock of The Champaign County Telephone Company. It is further

Ordered, That the findings hereinbefore set forth as to rates and service shall not be binding upon this Commission in any future proceeding involving said matters.

✽

No. 1809—In the Matter of the Application of The Citizens Telephone Company of Delaware, Ohio, for Authority to Issue and Sell Common Capital Stock to Reimburse Treasury. Prayer Granted.

(Dated November 24, 1919.)

This day this matter came on for final consideration upon the application of The Citizens Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio

with its principal place of business and office at Delaware, Ohio), asking the consent to and authority of this Commission for the issue of its common capital stock of the par value of thirty thousand dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of its treasury for uncanceled capital expenditures therefrom between the dates December 31, 1917, and June 30, 1917, both inclusive.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that, within the period December 31, 1917, and June 30, 1919, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$40,043.57, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said common capital stock of the par value of \$30,000.00 and the money to be procured thereby are reasonably required and necessary for the partial reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Citizens Telephone Company (of Delaware, Ohio), be, and hereby it is authorized to issue its common capital stock of the par value of thirty thousand dollars (\$30,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to wit: The partial reimbursement, to the extent of such proceeds, of applicant's treasury for the sum of \$40,043.57, not secured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, between the dates December 31, 1917, and June 30, 1919, both inclusive, for the construction, completion, extension and improvement of its facilities. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its said capital stock and

the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

And it appearing that, by the order, made and entered as of date July 24, 1918, in proceeding No. 1573, the applicant was authorized to issue its common capital stock of the total par value of fifty-five thousand dollars in exchange, when and as the same should be presented, for its outstanding bonds of the same principal sum, of which said capital stock the whole thereof has not, at this date, been so exchanged for applicant's said bonds, it is, therefore, further

Ordered, That, pending the issue of applicant's common capital stock herein authorized, the applicant be, and hereby it is authorized to temporarily use not exceeding thirty thousand dollars, par value, of its capital stock, authorized to be issued under said proceeding No. 1472 for the purposes herein prescribed, provided that an equal par value of the capital stock herein authorized to be issued and disposed of thereafter be used for the purposes prescribed in said order in proceeding No. 1473.

3

No. 1868—In the Matter of the Application of A. C. Singer, Sole Owner and Manager of Chesapeake and Lawrence County Telephone Company, to Issue Certain Notes Secured by Mortgage. Prayer Granted.

(Dated November 24, 1918.)

This day this matter came on for final consideration upon the application of A. C. Singer, of Chesapeake, Lawrence county, Ohio, the sole owner and manager of the Chesapeake and Lawrence County Telephone Company, asking the consent and authority of this Commission to issue to R. C. Cassidy, promissory notes, bearing interest at the rate of six percentum per annum, and secured by a mortgage upon the property of the said Chesapeake and Lawrence County Telephone Company, of the total principal sum of \$3200.00, maturing \$1000.00 in one year from date, \$1000.00 in two years from date and \$1200.00 in two years and six months from date, as evidence of complainant's indebtedness to the said R. C. Cassidy for the deferred payment of the consideration for the said Chesapeake and Lawrence County Telephone Company, the purchase of which, by applicant, subject to a real estate mortgage

indebtedness of \$500.00 and a chattel mortgage indebtedness of \$1150.00, was duly consented to and authorized by the order heretofore made and entered in proceeding No. 1805:

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the value of said property is not less than the consideration to be passed therefor and that the issue of applicant's said notes is reasonably required and necessary for the acquisition of property, to be used and useful for the convenience of the public in the furnishing of telephonic service, and is satisfied that consent and authority for the issue and disposition of said notes should be granted. It is therefore

Ordered, That the said A. C. Singer, as owner and manager of the Chesapeake and Lawrence County Telephone Company, be, and hereby he is authorized to issue promissory notes, to be dated November 18, 1919, bear interest at the rate of six percentum per annum, and secured, as to principal and interest, by a mortgage upon the property of the said Chesapeake and Lawrence County Telephone Company, of the total principal amount of three thousand, two hundred dollars (\$3200.00), maturing \$1000.00 in one year from date, \$1000.00 in two years from date, and \$1200.00 in two years and six months from date. It is further

Ordered, That said notes be issued only to R. C. Cassidy in evidence of applicant's indebtedness for the deferred payments for the property of said Chesapeake and Lawrence County Telephone Company, the purchase of which, by applicant and subject to a real estate mortgage indebtedness of \$500.00 and a chattel mortgage indebtedness of \$1150.00, was duly consented to and authorized by the order made and entered in proceeding No. 1805. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of notes pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property shall not be binding upon this Commission in any future proceeding involving the subject of rates or service.

No. 1792—In the Matter of the Application of Thomas McGovern, B. B. Seymour and J. D. Cummins, for an Order Authorizing and Approving an Issue of Stocks and Bonds by a Corporation to be Organized to Acquire the Railroad and Property Formerly of The Pennsylvania and Ohio Railway Company. Supplemental Order.

(Dated November 7, 1919.)

The Commission having heretofore, to wit, upon the twenty-eighth day of October, 1919, by order duly made and entered herein, approved (subject to the production, at the further hearing hereof, of evidence demonstrating the value of said property) a plan for the capitalization of a corporation, proposed to be organized by the said Thomas McGovern, B. B. Seymour and J. D. Cummins, for the purpose of acquiring, maintaining and operating the property, rights and assets heretofore of The Pennsylvania and Ohio Railway Company and more lately acquired, at judicial sale, by the bond holders of said last named corporation, which plan contemplated the issue by said proposed corporation of common capital stock of the par value of \$400,000.00 and first mortgage, six per cent. bonds of the principal sum of \$100,000.00, in payment of the consideration for said property, the discharge of certain prior liens and the provision of a working capital and a fund for the extension and improvement of said property, the latter to cost the estimated sum of \$42,710.82.

This day this matter came on further to be heard, and was heard upon the supplemental application filed herein by The Pennsylvania and Ohio Traction Company (a corporation duly organized and existing under and by virtue of the laws of Ohio) asking the specific consent and authority of the Commission to issue its common capital stock of the par value of \$400,000.00 and its first mortgage, six per cent. bonds of the principal sum of \$100,000.00; all of said capital stock to be delivered and \$57,289.18 of the proceeds arising from the sale of said bonds to be paid as the consideration for all the property, rights and assets heretofore of The Pennsylvania and Ohio Railway Company and more recently acquired, at judicial sale, by the bondholders of said corporation and for the discharge of some \$29,059.28 prior claims outstanding against said property as of September 8, 1919, and the balance of the proceeds of said bonds to be used as a working capital and to provide for the partial payment of certain additions, extensions and improvements to said property.

Upon consideration whereof, and being fully advised in the premises, the Commission finds from the pleadings filed herein, the evidence submitted upon the hearing hereof and for the purposes of this proceeding:

(1) That the said property, rights and assets heretofore of The Pennsylvania and Ohio Railway Company, now to be acquired by the applicant, are worth not less than the sum of \$457,889.18.

(2) That the applicant now has in contemplation the construction of additions, extensions and improvements to its property and facilities, the cost of which will be approximately the sum of \$42,710.82, and

(3) That the issue of said capital stock and bonds is reasonably required and the money to be procured from the sale of said bonds necessary for the acquisition of property, to be used and useful for the prosecution of applicant's corporate purposes, and the construction, completion, extension and improvement of its facilities,

and is satisfied that consent and authority for the issue and disposition of said capital stock and bonds should be granted. It is, therefore,

Ordered, That said The Pennsylvania and Ohio Traction Company be, and hereby it is authorized to issue its common capital stock of the total par value of four hundred thousand dollars (\$400,000.00), and its first mortgage, six per cent. ten year bonds of the principal sum of one hundred thousand dollars (\$100,000.00), and that said bonds be sold for the highest price obtainable but not less than ninety-five (95) percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That said capital stock be issued and delivered, and the proceeds arising from the sale of said bonds expended for the following purposes, and no others, to wit:

Said capital stock to be issued as fully paid and non-assessable and \$28,229.90 of the proceeds of said bonds to be paid, as the full and final consideration for the property, rights and assets heretofore of The Pennsylvania and Ohio Railway Company, lately sold at judicial sale to the bondholders of said corporation and now to be acquired by the applicant herein;

\$29,059.28 of the proceeds of said bonds to be used to discharge the prior claim against said property as of September 8, 1919, and

The balance of the proceeds of said bonds to be used as a working capital and to provide, in part, for certain additions, extensions and improvements to applicant's facilities, the cost of which has been estimated at the sum of \$42,710.82.

It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock and bonds and, in full detail, the expenditure of the proceeds of said bonds pursuant to the terms and conditions of this order. It is further

Ordered, That the finding as to the value of said property hereinbefore set forth shall not be binding upon this Commission in any future proceeding involving rates or service.

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No. 794—In the Matter of the Joint Application of The Central District Telephone Company and The Warren and Niles Telephone Company for the Approval of an Agreement for the Sale of Property and for the Approval of an Agreement Providing for the Interchange of Traffic. Modification of Order.

(Dated November 20, 1919.)

This day, after full hearing, this matter came on for further consideration upon the application of The Chesapeake and Potomac Telephone Company of West Virginia, (the successor in title, on April 1, 1918, to the property in the State of Ohio theretofore of The Central District Telephone Company), asking such modification and amendment of the order, made and entered herein as of date May 21, 1917, as will permit and authorize it

(1) To establish, effective December first, 1919, certain proposed increased exchange rental charges for the furnishing of local exchange service in the city of Niles, Ohio, in lieu of the rates and charges for such service fixed and prescribed by said order of May twenty-first, 1917, which rental charges were effective June 16, 1919, superseded by a schedule of rental charges (now in effect) and which were instituted under authority of the Postmaster General during the period of governmental control of applicant's property.

(2) To establish, effective December first, 1919, for said city of Niles, a new and greatly contracted free service area in lieu of the free service area fixed and prescribed by said order of May twenty-first, 1917, but now and since said June 16, 1919, also modified under such governmental authority.

(3) To establish, effective December first, 1919, for the city of Niles, certain increased rates and charges for exchange mileage and foreign exchange line mileage, and extension, ties, private and leased lines, in lieu of the rates and charges for such services fixed and prescribed by said order of May 21, 1917, and still in effect, and

(4) To establish, effective December 1, 1919, and in addition to the rates, charges, rentals and tolls for the furnishing of its service, heretofore fixed and prescribed by this Commission, the charges instituted under the direction of the Postmaster General during the period of governmental control and operation of applicant's system, popularly denominated as "Service Connection Charges."

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the Commission finds (1) that the rental charges now maintained by The Chesapeake and Potomac Telephone Company of West Virginia for local exchange service in the city of Niles and set forth in its schedule, P. U. C. O. No. 22, Fourth Revised Sheet 1, now on file with this Commission, are not now excessive and unreasonable and should not be disturbed until such time as definite results of applicant's operation thereunder may be ascertained; (2) that the free service area fixed and prescribed in said order of May 21, 1917, was reasonable and necessary to meet the public convenience in furnishing a unified telephonic service in said territory, and should not now be changed or modified; (3) that this Commission, by order duly made and entered in proceeding No. 1728 has already determined the matter of charges, by the telephone companies operating in Ohio, for installations, transfers and moves and changes, and (4) that the rates now maintained by the applicant for exchange mileage and foreign exchange line mileage, and extension, tie, private and leased lines have not been shown to be inadequate or insufficient, and should not now be altered or changed. It is, therefore,

Ordered, That the order made and entered herein as of date May 21, 1917, be, and hereby it is modified and amended in the following respect only: That said The Chesapeake and Potomac Telephone Company of West Virginia be, and hereby it is authorized to establish, effective December 1, 1919, and to thereafter maintain and collect, until the further order of this Commission, the rental charges for the furnishing of local exchange service in the city of Niles, Ohio, set forth in the schedule hereinbefore

specified, which exchange rental charges were herein not found to be now unjust or unreasonable. It is further

Ordered, That said The Chesapeake and Potomac Telephone Company be, and hereby it is notified, directed and required, within sixty days after June 30, 1920, to file with this Commission a detailed report, under the oath of its chief accounting officer, of its revenues and disbursements, by exchange and as a whole, for the State of Ohio, for the year ending June 30, 1920. It is further

Ordered, That jurisdiction of this proceeding be specifically retained for the receipt and consideration of the reports hereinbefore required and the making of such further and other order herein as the facts thus disclosed may warrant or require.

ATTORNEY GENERAL

Subject to the Qualifications that a Corporation in Transferring Stock Must Have Exercised Due Care so that if There Were Anything About the Circumstances of the Case to Put it on its Inquiry in Relation to the Transfer, it Would be at Fault Did it not Make Such Inquiry, Such a Corporation Transferring on its Books and Without Knowledge of the Facts, a Share of Stock, the Certificate for Which, Indorsed in Blank by the Owner of Record, is Presented to it for Transfer After the Death of Such Owner of Record, is not Liable for any Inheritance Tax Which Might Become Due in Respect of Such Share, if it Should Subsequently Develop that Such Share was Transferred Without Consideration, in Contemplation of the Death of the Donor. The Importance of the Qualification Above Stated Must not be Overlooked.

No. 808—(Opinion Dated November 25, 1919).

Hon. Robert E. Marshall, Prosecuting Attorney, Sidney, Ohio.

Dear Sir: I have your letter of recent date requesting opinion of this office upon the following question:

“Where an Ohio corporation receives for transfer a certificate of stock from A, a resident of another county in Ohio, which certificate stands on its books in the name of B, also a resident of another county, and is endorsed in blank by B, and the corporation has no knowledge of any facts or circumstances other than the above; if it should subsequently appear that the transfer from B to A was made without consideration and in contemplation of the former's death, which actually occurred before the presentation of the certificate for transfer, would the corporation be liable for the taxes, under Sec. 5348, G. C., because it, in ignorance of any of these facts, and acting in good faith, transferred the stock without notifying the tax commission of Ohio or the county auditor?”

I enclose herewith copy of opinion (No. 684) addressed to Hon. Frank F. McGuire, inspector of building and loan associations, relative to the interpretation of Section 5348-2, G. C. In this opinion the question suggested by you is raised but not decided. The ground work of the discussion necessary to answer the question

which you submit is, however, found in that opinion, if it be established that the first sentence of the section is to be interpreted like the second sentence thereof is interpreted in the opinion to Mr. McGuire. That is to say, the first sentence of Section 5348-2, G. C., is in terms a prohibition against the transfer on the books of the company or the issuance of new certificates for shares of stock passing from a decedent, without the consent of the tax commission.

The second sentence is in terms a like prohibition against the transfer of assets other than the stock of the company making the transfer. It is held in the opinion referred to that the prohibition in the latter case has not the effect of making such transfer absolutely illegal, but that the sanction for the enforcement of the prohibition is found in the sentence which provides that:

"Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession to such securities, deposits, assets or property. Such liability may be enforced by action brought by the county treasurer in the name of the state in any court of competent jurisdiction."

On the question thus arising, it is the opinion of this department that the provision last quoted is to be read in connection with the first sentence of this section as well as in connection with the second sentence thereof: so that the only consequence of a violation of the first sentence is liability for the taxes to be recovered in a separate action, the validity of the transfer itself being unimpeached thereby.

This question is not entirely free from doubt. Because of the failure of the two sentences last above quoted to mention "shares of stock" by name, an argument might be built up to the effect that these provisions relate only to the enforcement of the prohibition contained in the second sentence. However, according to the terms of the uniform stock transfer law found in our General Code. Sections 8673-1 to 8673-22, inc., the transfer described in Section 5348-2, G. C., would be perfectly legal.

It is well established law that statutes *in pari materia*, whatever their order of enactment, will be construed together and full effect given to each, rather than that one of them will be interpreted as a limitation upon or derogation of the other.

Having regard to the manifest purpose of Section 5348-2, G.

C., as more fully discussed in the other opinion referred to, a copy of which is herewith enclosed, it is most reasonable to interpret that section not as in derogation of the substantive rights of the immediate parties to the transfer of stock, and therefore pro tanto amendatory of the stock transfer act, but merely as a means of securing payment of the inheritance tax. This result can be perfectly achieved by giving to the sentences which have been quoted from Section 5348-2, G. C., the interpretation to which they are easily susceptible (inasmuch as they refer to "this section" as an entirety), and holding, as has been previously held in this opinion, that the only effect of making a transfer of shares or issuing a new certificate, in violation of the first sentence of the section, is to render the offending corporation liable for the taxes due on account of the succession to the shares (not, as pointed out in the other opinion, the entire taxes due on account of the succession arising out of the estate of the decedent, nor even the entire tax on account of such successions to the particular successor).

Your letter seems to assume the correctness of all that has been heretofore set forth and it has been included in this opinion merely to complete the discussion of all questions which are even incidentally involved. That is to say, you assume that the only effect of non-compliance with Section 5348-2, G. C., on the part of a corporation whose stock has been transferred in apparent violation thereof, would be to subject the corporation to liability for the taxes.

You then inquire whether such liability exists under circumstances like those stated by you, which clearly show good faith and want of knowledge of the facts, which give rise to original liability for the tax, on the part of the transferring corporation. This was the question suggested but not decided in the other opinion. Coming now to the decision of that question, it is the opinion of this department that in such case liability would not exist; or, to put it perhaps more technically, a suit to enforce the payment of the tax against the corporation could be successfully defended by showing the facts upon which good faith and want of knowledge could be predicated.

Although the statutes of many states contain provisions essentially similar to those of Section 5348-2, G. C., no decision interpreting such provisions has been found. The constitutionality of such statutes is sustained in *National Safe Deposit Co. v. Stead*, 232 U. S., 58.

It would seem that if in practice any harsh or arbitrary construction had been put upon provisions like these, some question would ere now have arisen, and authority would be available. I take it, therefore, that either there has been small necessity for resort to the second liability of the transferring corporation or the safe deposit company, as the case may be, or else that such liability has been enforced only in case of flagrant violation of the law.

Dealing, therefore, with a case of first impression, this opinion will be limited to the precise facts stated by you. It is clear that in the case you put, the actual transfer of the stock certificate, entitling the transferee to have the shares transferred on the books of the company or to have new certificates issued to him therefor, took place *inter vivos*. The case is not one where the corporation is asked to transfer on its books or issue a new certificate of stock for shares belonging to the estate of a deceased person and devolving upon some one else only by virtue of death. In such a case at common law and under the stock transfer act as well, the corporation would be liable to the estate of the decedent if it should transfer the share or issue new certificates for them, without administration. That being the case, it could hardly be contended that any hardship is involved in imposing upon the corporation to see to it that due administration is had before transferring the shares on its books, and then not transferring to the administrator without the consent of the tax commission; for the duty imposed by Section 5348, G. C., is but a slight enlargement of the duty imposed by the general law.

However, in the case you submit the transfer is one that does not involve the necessity for administration, because, as previously stated, it actually took place *inter vivos* and becomes taxable only if and because made in contemplation of death. Whether or not a succession occurs through a transfer in contemplation of death and therefore becomes taxable under paragraph 3 of Section 5332, G. C., is always a question of fact. Probably the burden is on the state or its representatives to show the facts which subject the succession to taxation. It is conceivable that the corporation might be a party to the transaction and thus have full knowledge of the facts, in which event a question would arise as to whether it would make itself liable by transferring the shares or issuing new shares without the consent of the tax commission. But that is not the case which you state.

Where the corporation is in ignorance of the facts, as it may well be, and the shares presented to it for transfer bear the indorsement of the donor, showing conclusively that the transfer took place *inter vivos*, it is the opinion of this department that suit to enforce the liability provided for in Section 5348-2, G. C., on the theory that the corporation had violated the first sentence thereof, could be successfully defended against. The principle which is believed to be applicable to this case is that suggested in the other opinion, to which reference has been made. The contingent liability of the corporation for the tax is not original. Personal liability is imposed by Section 5336, G. C., upon the executors or trustees and upon the successors. Even here there is an original and a secondary liability, the successors being primarily or ultimately liable, and the executor or personal representative being secondarily liable.

The liability of the corporation then is, as suggested in the other opinion, in the nature of a penalty for its failure to comply with the law. It is to be enforced, therefore, subject to principles which apply to the enforcement of other penalties; and the statute providing for it is to be interpreted like other statutes of a similar nature are interpreted.

It is, of course, familiar law that penal statutes are to be strictly construed. This rule is subject to two qualifications: First, that the manifest object of the statute is not to be defeated by strict construction; and second, that there must be some doubt as to the meaning of the statute before there is anything whatever to construe (*Slingluff v. Weaver*, 66 O. S., 621). However, it must also be understood that the character of a statute as penal or remedial is not determined solely by reference to its criminal or civil character. That is to say, penal statutes include "all statutes which command or prohibit certain acts and establish penalties for their violation," (36 Cyc., 1181) even though the penalty when recovered does not inure to the benefit of the public. On the contrary,

"laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good are not, in a strict sense, penal acts, although they may inflict a penalty for their violation."

Id., 1183.

In this case before proceeding further with the discussion it must be determined whether an act which does impose a penalty

in the nature of a punishment for a wrong to the public, as this statute does, comes within the class of penal statutes or is removed therefrom by consideration of the fact that its main purpose is to secure the collection of the public revenue. Here we must remember that revenue laws are themselves not remedial in character—not founded upon any permanent public policy, but, on the contrary, are subject in their entirety to the rule of strict construction.

36 Cyc., 1189.

The rule is stated in the text cited as follows:

"The doctrine of the strict construction of revenue statutes * * * should be applied with due regard to the intention of the legislature as expressed in the statute, and with a view to promoting the object of the statute; and especially those provisions of the statute which are intended to prevent fraud should receive a liberal construction."

These principles are believed to be correct and, as stated, the first task in the consideration of the question which you submit is to apply them to the statute under consideration. Is it a statute to prevent fraud? Undoubtedly it is to some extent. But its scope goes considerably beyond these bounds, and it may with accuracy, I think, be described as a statute the purpose of which is to secure the collection of the public revenue. There would be no "fraud" involved in the part of a corporation in transferring a share of stock on its books in accordance with a duly executed indorsement, nor even in transferring such a share to an executor or administrator of a deceased stockholder. These acts are not fraudulent in themselves; they are perfectly innocent even as reflecting on the assessment and collection of the inheritance tax. To be sure, in the case of non-residents especially, such transfer might prove to be a step in a process undertaken with intent to defraud the state of its revenue and actually succeed in so doing. But this would be the only fraudulent aspect of even such a transaction. The transfer itself, as has been hereinbefore pointed out, is essentially an innocent act and indeed the mere exercise of a legal right.

Consideration being given, then, to the fact that the liability imposed upon the corporation or financial institution by Section 5348-2 is a tertiary liability aimed to secure the state, rather than a primary liability for the taxes in the first instance, the conclusion is reaffirmed that the statute, if open to any construction at

all, is subject to strict construction unless that construction will defeat its manifest object.

This leaves the two further questions previously suggested, which will be taken up in their order.

First: Is the statute susceptible to any "interpretation" at all? It provides in that part of it which is involved in your inquiry that

"No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any shares or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, without," etc.

The crux of the question which is here encountered is presented by the word "decedent." What are the implications of this word? Does it connote an objective fact, or a state of mind with request to such fact? In other words, does this language clearly import a prohibition directed against the corporation from acting in case the facts are thus and so, or only against acting in case it knows or by the exercise of due care should know that they are so? Putting it in still another way: Does the corporation act at its peril?

On careful consideration it appears that this question cannot be satisfactorily considered or answered without considering also the next question above suggested, viz., as to the purpose for which the requirement was made by the legislature. Without citing cases, which are in great confusion on the subject, the general trend of the authorities may be said to be to the effect that if the legislative purpose would be thwarted in the preponderant number of probable cases by construing a statute like the one under consideration so as to condition the prohibited act upon knowledge or intent, such a construction will be rejected and the statute will be interpreted so as to place the burden of ascertaining the objective facts upon the persons to whom it applies.

Instances of the application of this principle are afforded by cases under the food and drug laws. The following is quoted from the opinion of Shauck, J., in *State v. Kelly*, 54 O. S., 166, 178, 179:

"The act is not a provision for the punishment of those who sell adulterated food or drugs, because of any supposed turpitude prompting such sales or indicated by them. * * * It is 'an act to provide against the adulteration of food and drugs.' It is a plan devised by the general assembly to pro-

tect the public against the hurtful consequences of the sales of adulterated food and drugs, those consequences being in no degree increased by the vendor's knowledge, or diminished by his ignorance, of the adulteration of the articles which he offers for sale. * * * If this statute had imposed upon the state the burden of proving the purpose of the vendor in selling an article of food or his knowledge of its adulteration, it would thereby have defeated its declared purpose. * * *

The statute involved in that case provided that
"No person shall within this state * * * offer for sale or sell any drug or article of food which is adulterated."

It will be seen that the question is quite similar to the one involved in your inquiry. The trend of the court's reasoning is further illustrated by Judge Shauck's question from the case of *Commonwealth v. Murphy*, 42 N. E., 574, as follows:

"Considering the nature of the offense, the purpose to be accomplished, the practical methods available for the enforcement of the law, and such other matters as throw light upon the meaning of the language, the question in interpreting a criminal statute is whether the intention of the legislature was to make knowledge of the facts an essential element of the offense, or to put upon everyone the burden of finding out whether his contemplated act is prohibited, and of refraining from it if it is."

The concluding paragraph of Judge Shauck's opinion is as follows:

"In the enactment of this statute it was the evident purpose of the general assembly to protect the public against the harmful consequences of the sales of adulterated food and drugs, and, to the end that its purpose might not be defeated, to require the seller at his peril to know that the article which he offers for sale is not adulterated, or to demand of those from whom he purchases indemnity against the penalties that may be imposed upon him because of their concealment of the adulteration of the articles."

On the other hand, laws regulating the sale of intoxicating liquor under the constitutional authority then existing to "provide against the evils resulting from the traffic in intoxicating liquors" and, of course, referable to such a legislative motive were otherwise construed. The earlier cases adopted the rule that in spite of the absence of the word "knowingly" or its equivalent in statutes of this character, such statute would be construed as if such word had been actually employed so that the prosecution

would have to allege and prove guilty knowledge, (*Miller and Gibson v. State*, 3 O. S., 475) though, of course, knowledge might be inferred from circumstances.

Later, on, however, this rule was modified so as to dispense with the necessity of allegation and proof of guilty knowledge on the part of the prosecution, but to permit the defendant to show want of knowledge to rebut the *prima facie* case established by the prosecution on proof of the objective fact.

Crabtree v. State, 30 O. S., 382.

Farrell v. State, 32 O. S., 456.

I cannot find that this last line of cases has been overruled or modified in any reported case, though it is my impression that the trend of decision in this class of cases is toward the *Kelly* case. Be that as it may, however, the mere statement of these various rules show that statutes like the one under consideration in this opinion are to be regarded as susceptible to interpretation. That is to say, such statutes are sufficiently doubtful in meaning to call into play the principles which determined the various decisions of the courts in the cases mentioned.

It is concluded therefore that the connotation of the word "decendent" in Section 5348-2 is sufficiently uncertain to justify the further inquiry into the purpose and intent of the legislature with a view to its interpretation. At this point it may be well to repeat the rule, which is that where such uncertainty appears, and the statute is penal, as this one is, it will be construed favorably to the person or corporation who would be subject to the penalty unless to do so would defeat the declared or otherwise manifest purpose of the law.

Now the purpose of Section 5342-2 has already been roughly described. It is to secure the collection of revenue. To this end a duty is case upon the corporation to act so as to protect the interests of the state. The thing which would happen should the desired action not be taken, for good reason or otherwise, would be the loss of revenue which another person is primarily liable to pay to the state. This is no such consequence as would attend the promiscuous sale of adulterated food. It is not even such a consequence as would attend the illegal sale of intoxicating liquor or the sale of such liquor to persons in the habit of becoming intoxicated. It is not even the kind of a consequence that would ensue from the innocent remarriage of a person having a husband or wife living but supposed to be dead, as in *Commonwealth v.*

Murphy, *supra*. In other words, the collection of the revenue is not an end in behalf of which a legislative intent to provide for action at peril can be at least as plausibly inferred as would be the prevention of the class of evils suggested by the cases encountered. That this last statement is true is proved, it is believed, by the strict construction given to revenue acts themselves, especially where such acts constitute special impositions or excises as distinguished from general property taxes levied under constitutional provisions, like Article XII, Section 2 in its present form. That is to say, where the revenue act as a whole is susceptible to a strict construction in favor of the taxpayer, it would be going too far to hold that an ancillary provision like Section 5348-2 should be given liberal interpretation in favor of the state and against the corporation, which is not even primarily liable for the taxes.

But there is another point of view from which questions of statutory construction like that under consideration have been approached. This point of view is suggested by the celebrated criminal case of *Regina v. Prince*, L. R., 2, C. C. R., 154. In that case the facts of which need not be stated, the court took cognizance of the quality of the act actually committed by the defendant as reflecting upon the probable intent of the legislature to make it an act at peril. The act was highly immoral in itself, and if certain facts existed was declared to be criminal. The court applied the statute in such manner as under these circumstances to place upon the defendant the burden of discovering whether or not such additional circumstances existed.

This test is one which could be satisfactorily applied, for example, to the food and drug cases, or even to the liquor cases, though it would produce a result opposite to that actually arrived at by the Supreme Court of this state in the latter class of cases. Selling food is in itself not an immoral act, of course, but one directly affecting the health of the people. The business of selling intoxicating liquors is in itself one attended by more or less public evil. In both cases the addition of certain circumstances—adulteration in the one, and, for example, the fact that the purchaser of the liquor is in the habit of getting intoxicated in the other—make the acts penal. Under such circumstances it is reasonable to assume that the legislature intended to prohibit such acts at all events, and thereby to place upon the actor the bur-

den of satisfying himself that the facts introducing the criminal element are not present.

But transferring stock properly presented for transfer on the books of the corporation is not an act which in itself is attended by any possible deleterious consequence to the public.

Moreover, I think we must take cognizance of a fact already alluded to, namely, that in the vast majority of cases which would arise under Section 5348-2, G. C., the corporation would have knowledge apparent on the face of the papers presented to it or the records in its possession that a death had occurred, and indeed that the transfer requested was made necessary by that death. The case which you submit is one which would occur very infrequently, to say the least, in the natural course of events. Shall we assume that the legislature intended to provide against such cases, or that the policy of the legislature is such as to dictate such an interpretation of the statute? It seems to me unreasonable so to hold. The legislature did indeed fail to use the word "knowingly" and hence in an action to enforce the penalty a prima facie case would be made out by allegation and proof without a showing of facts from which knowledge would be inferred. But when the legislature acted it doubtless was taking cognizance of the normal or typical case—the one which would occur perhaps ninety-nine times out of a hundred, in which a certificate of stock would be presented for transfer with the indorsement of an executor or administrator thereon, or in which an executor or administrator would request a transfer to the estate of shares standing in the name of a deceased person. This being true, and the kind of transfer described by you being an inherently innocent act—not subversive of any public policy—it seems to follow that it should not be regarded as within the contemplation of the statute.

In other words, though in an action against a corporation by the county treasurer, under favor of Section 5348-2, G. C., a prima facie case might be stated by the treasurer by merely showing that a taxable succession had occurred and that the corporation had failed to get the consent of the tax commission to the transfer of the shares, yet evidence would be admissible on behalf of the corporation to show its want of knowledge of the facts making the succession taxable, the exercise of due care on its part and such other facts as might show good faith.

Subject, therefore, to the qualification that the corporation in question must have exercised due care so that if there was

anything about the circumstances of the case to put it on its inquiry in relation to the transfer, it would be at fault did it not make such inquiry, it is the opinion of this department that a corporation transferring on its books, and without knowledge of the facts, a share of stock the certificate for which, indorsed in blank by the owner of record, is presented to it for transfer after the death of such owner of record, is not liable for any inheritance tax which might become due in respect of such share, if it should subsequently develop that the share was transferred without consideration, in contemplation of the death of the donor.

The importance of the qualification expressed in the foregoing paragraph and elsewhere in this opinion must not be overlooked. In the case you put, for example, a very slight alteration of the facts as stated would be sufficient to put the corporation upon its inquiry. For example, if the corporation knew that B, the deceased person, was dead when the certificate bearing his endorsement was presented to it for transfer, this of itself would be enough, in the opinion of this department, to make it incumbent upon the corporation to make inquiry as to whether or not the delivery and endorsement of the share was a commercial transaction as distinguished from a gift. In short, knowledge of the fact of death would open up to the corporation an inquiry which it would then be its duty to make. The above answer is therefore confined to the circumstances as actually stated by you, from which statement it does not appear that the corporation when it transferred the stock on its books even knew that B was dead.

In so holding, however, I do not mean to intimate that the statute does not apply at all to such a state of affairs. The section has been heretofore described for purposes of discussion as one designed to secure the collection of the state's revenue. This is to be done, as the section shows on its face, by securing the consent of the tax commission before the transfer is made. The latter part of the section, which is of similar purport, affords two methods of securing the state's revenue, in that not only is consent required, but enough of the assets of the decedent to pay the tax is to be retained unless the consent is given.

What is the purpose in getting the consent of the commission? For we must remember that when the consent is obtained the duty of the corporation is discharged and all liability under it is avoided. It seems clear that the answer to this question is that the purpose in requiring the commission's consent to be

secured is to give information to the taxing authorities as to the existence of a taxable succession and an opportunity to them to act so as to protect the state's interests.

This being true, it seems to me that the spirit of the section at least requires the corporation, which has innocently made a transfer of its stock under the very exceptional circumstances mentioned by you, to notify the tax commission after the transfer is made and when the true facts come to its attention. In this way a substantial compliance with the section would be affected. As to whether or not failure so to notify the commission would give rise to liability under the latter part of the section, no direct opinion is, however, expressed as none is required by the statement of facts which you make.

3

The Duty of Determining Whether or not There is an Objectionable Similarity Between a Name Proposed and One Already Adopted or Appropriated by Another Banking Institution Devolves Solely Upon the Superintendent of Banks, Subject to the Right of Appeal. The Duty of Determining Whether or not an Objectionable Name has Been Selected by a Banking Corporation Devolves Upon the Superintendent of Banks Alone. The Superintendent of Banks Should Reach His Conclusion Before the Articles of Incorporation Become a Part of the Public Records—The Superintendent of Banks Having Certified His Approval of a Name Selected by Such Institution, May not Revoke His Certificate After its Articles of Incorporation Have Been Recorded by the Secretary of State Merely Because he Afterward Reaches a Different Conclusion as to the Legality of the Use of Such Name by the Institution.

No. 801—(Opinion Dated November 19, 1919.)

Hon. Philip C. Berg, Superintendent of Banks, Columbus, Ohio.

Dear Sir: You have addressed to me for consideration the following communication:

"Will you advise this department whether the statutory discretionary authority as to the similarity of the corporate names of banking corporations and banking institutions seeking to be incorporated is lodged—(first) in the Superintendent of Banks exclusively, by virtue of section 710-44, General Code; (second) jointly in the Superintendent of Banks and the Secretary of State of Ohio, by virtue of sections 710-44 and

8628, General Code of Ohio; (third) if lodged in the Superintendent of Banks exclusively, at what stage in the proceedings for the incorporation of a bank, etc., under section 710, General Code, does the right to exercise such discretion cease to exist?"

Section 710-41 General Code, a part of the Graham banking act, effective July 11, 1919, sets forth general provisions relating to the organization of banking corporations. They need not be quoted here.

Section 710-42 General Code contains this language:

"* * * The secretary of state shall forthwith transmit to the superintendent of banks a copy of such articles of incorporation and shall not record the same until duly authorized so to do by the superintendent of banks as hereinafter provided."

Section 710-44 General Code is as follows:

"Upon receipt of a copy of the articles of incorporation of such proposed bank, the superintendent of banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders and if it appears that such corporations, if formed, will be lawfully entitled to commence the business of banking, the superintendent of banks shall so certify to the secretary of state, who shall thereupon record such articles of incorporation. But the superintendent of banks may refuse to so certify to the secretary of state, if upon such examination and investigation he has reason to believe that the proposed corporation is to be formed for any other than legitimate banking business, or that the character and general fitness of the persons proposed as stockholders in such corporation, are not such as to command the confidence of the community in which such bank is proposed to be located or that the public convenience and advantage will not be promoted by its establishment, or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted, or appropriated by an existing bank in this state, or so similar thereto as to be likely to mislead the public, unless the place of business of such proposed corporation is to be located in a county other than the one in which the corporation bearing such similar name is then doing business and the corporation so adopting such name adds thereto the words 'of' (Indicating thereby the name of the city, village or township in which its place of business is situated.)"

Section 710-45 General Code provides that if the superinten-

dent of banks without such certificate, an appeal may be taken to a board composed of the governor, the superintendent of banks and the attorney general, whose decision in the matter shall be final.

The language of section 710-46 General Code is:

"Upon receipt of such certificate from the superintendent of banks the secretary of state shall record said articles of incorporation; one copy thereof, duly certified by the secretary of state shall thereupon be furnished to the incorporators of such corporation, and one copy to the superintendent of banks, to be by him filed in his office. All certificates thereafter filed in the office of the secretary of state relating to such corporation shall be recorded, and a certified copy thereof forthwith furnished to the superintendent of banks and filed in his office."

Section 710-52 General Code provides that banking corporations shall be created, organized, governed and conducted and their directors chosen in all respects in the same manner as provided by law for corporations organized under the general corporation laws of this state, in so far as the same shall not be inconsistent with the provisions of the banking act.

After the articles of incorporation of the proposed banking corporation have been subscribed and acknowledged, they are to be filed in the office of the secretary of state and a copy thereof transmitted forthwith to the superintendent of banks. Section 710-42 General Code.

The superintendent of banks is to determine whether or not the proposed corporation "is lawfully entitled to commence the business of banking" and if it appears to him that it is, he must so certify to the secretary of state. He may refuse to make such certificate if the name of the proposed corporation is likely to mislead the public as to its character or purpose, or so simulates one already adopted by another bank as to be deceptive. If he does certify that the institution may commence business, "the secretary of state shall record said articles of incorporation." Section 710-46 General Code.

Under the provisions of section 8628 General Code, relating to the organization and powers of corporation generally, it is provided that:

"Sec. 8628. The secretary of state shall not file or record any articles of incorporation wherein the corporate name is likely to mislead the public as to the nature or purpose of the business its charter authorizes, nor if such name is that of an existing corporation, or so similar thereto as to be likely to

mislead the public, unless the written consent of the existing corporation, signed by its president and secretary, be filed with such articles."

I am of the opinion that the duty of determining whether or not an objectionable name has been selected by a banking corporation devolves upon the superintendent of banks alone. Section 8628 is, as I have said, a general section, while those quoted from the banking act relate to a particular class of corporations and are in that sense special in their nature. Then they are of more recent enactment and as to the organization of banks supersede section 8628, if not consistent with it.

Section 710-44 General Code expressly makes it the duty of the superintendent to refuse to certify if the name selected is likely to mislead the public or is unduly similar to that adopted or appropriated by an existing bank. Clearly he must decide whether or not such objections exist and it would seem therefore that the secretary of state could not also determine such controversies because there might be a disagreement between the two officers. Then the duty of the secretary of state to record the articles, when approved by the superintendent of banks, seems to be mandatory under section 710-46 General Code. He is not given discretion to refuse because he may disagree with the superintendent of banks. But it would be entirely proper for the secretary of state, when transmitting the articles of incorporation to the superintendent of banks, to call attention to the use or appropriation of similar names by other corporations, and for the superintendent of banks to have the records of the secretary of state examined before issuing his certificate.

I therefore conclude that the duty of determining whether or not there is an objectionable similarity between a name proposed and one already adopted or appropriated by another institution devolves solely upon the superintendent of banks (subject to the right of appeal), though the secretary of state may with entire propriety call attention to what his records disclose as to such names.

If the superintendent finds that the name proposed is improper, when should he signify his disapproval of it? As noted if he is satisfied that the institution should be permitted to begin business, he shall so certify to the secretary of state and the articles of incorporation are thereupon to be recorded. Clearly the law contemplates that the superintendent of banks should reach his conclusion before the articles of incorporation become a part of the public records.

I am not prepared to say that if fraud or deception were practiced upon the superintendent in securing his certificate or some excusable mistake had been made, the certificate and the recording of the articles could not be questioned. But it is my view that under ordinary circumstances the superintendent of banks would not have the right to revoke or recall a certificate after the articles had been recorded. The certificate of the superintendent of banks, approving the name selected, would not prevent another institution, whose name had been unfairly and improperly appropriated, from preventing the use of it by injunction or from resorting to remedies generally available in unfair trade or competition cases. The following expression of the court in *Shoe Co. vs. Shoe Co.*, 9 O. D. (N. P.) 579 and 582, considering section 8620 General Code, is pertinent:

"But the Ohio statute gives the secretary of state no power to hear testimony or summon witnesses and makes no provision for notice to parties interested or the public generally that the secretary of state has under consideration the question of identity or similarity of certain corporate names. Under such circumstances it is not to be seriously considered that it was the intention of the legislature to make the finding of the secretary of state so conclusive that the courts cannot review it when a case is properly presented which requires such a review."

I am therefore of the opinion that the superintendent of banks having certified his approval of a name selected by such institution, may not revoke his certificate after its articles of incorporation have been recorded by the secretary of state, merely because he afterward reaches a different conclusion as to the legality of the use of such name by the institution.

SUPREME COURT.

GENERAL DOCKET.

16200. The Adams Express Co. v. Ida Beckwith et al. LUCAS. Judgment affirmed.

16207. Andrew Godfrey et al. v. Amelia Epple et al. MEIGS. Judgment affirmed.

16232. Otho W. Kennedy, Admr., v. Isaac N. Latcher. CRAWFORD. Judgment affirmed.

16250. City of Newark et al. v. The American Bottle Co. LICKING. Judgment of court of appeals reversed, cause remanded for further proceedings with instructions to overrule motion to dismiss the appeal.

16270. The Royal Indemnity Co. of N. Y. v. The Northern Ohio Granite & Stone Co. CUYAHOGA. Judgment affirmed.

16293. The State, ex rel. The Marble Cliffs Quarries Co., v. Carl M. Watts et al. FRANKLIN. Judgment reversed.

16301. The City of Elyria v. Roy F. Vandemark. LORAIN. Judgment affirmed.

16354. On the relation of Mike Gavalek, Relator, v. T. J. Duffey et al. IN .MANDAMUS. Writ allowed.

16384. The Village of Northfield et al. v. The Public Utilities Commission of Ohio. PUBLIC UTILITIES COMMISSION. Order affirmed.

16424. The State, ex rel. R. W. Archer, Treasurer of State, v. Edward B. Wilson, Treasurer of Stark County. IN MANDAMUS. Demurrer to answer overruled. Writ denied.

16437. Theodore Leonard, Jr. v. The State of Ohio. FRANKLIN. Judgment affirmed.

SECRETARY OF STATE

NEW CORPORATIONS.

Schulman Co., Dayton, \$10,000. Samuel Schulman, Philip J. Schulman, Helen Schulman, Anna Schulman.

Continental Equipment Co., Cincinnati, \$1,000. Mark J. Ryan, Edw. L. Ryan, Edw. Ryan, Della Ryan, Mary Ryan.

Farmers' Bank of Savannah, \$25,000. F. P. Farquarhanson, T. H. Beatlie, Gideon Barrett, George Brockaw, T. M. Henderson.

Charles C. Kinne Co., Cleveland, \$50,000. Charles C. Kinne, A. H. Fiebach, H. Rogers, M. Gansbury, E. A. Binyon.

Blatz-Queisser Co., Cleveland, \$25,000. Charles L. Blatz, R. L. Queisser, C. H. Myers, R. L. Queisser, Jr., J. L. Vaughan.

Farmers' Co-operative Supply Co., Ada, \$20,000. F. G. Wolber, C. N. Wolber, C. S. Wilcox, J. W. Ealey, J. H. Sher.

Leimkuehler-Norcross Co., Cleveland, \$10,000. R. C. Norcross, J. C. Reasner, E. Schwartz, M. A. Klein.

J. E. Drug Co., Cleveland, \$10,000. Adolph Weinberger, John Kormin, Jr., Florence Chaping, Alfred Safran, Led E. Krejci.

Stinson Aeroplanes Co., Dayton, \$25,000. Mrs. E. B. Stinson, Jack Stinson, P. N. Zigler, E. G. Denlinger, Carl W. Lenz.

Cleveland Gowganda Co., Cleveland, \$1,000,000. Frank G. Buehler, A. J. Eyring, L. J. McGurk, E. C. Becker, H. Douglass.

Northern Ohio Baking Co., Akron, \$50,000. E. B. Wadley, Beula B. Wadley, Alfred Herberich, Edmund Burroughs, Ralph Burroughs.

Cleveland Trailer Mfg. Co., Cleveland. H. J. Dunderdale, A. O. Schuman, H. A. Vickery, Lillian C. Schuman, Sadie May Dunsdale.

Homestead Oil and Gas Co., McArthur, \$12,000. L. J. George, G. E. Sharp, E. E. Hartley, J. P. Smith, III, ber E. Fri.

Harvey Steel Products Co., Cleveland, \$120,000. George Higgins, Thos. R. Jones. I. R. Kinder, James P. Wood, H. O. Jones.

Toledo Labor Building Co., Toledo, \$320,000. D. J. Farrell, O. L. Peppyard, W. C. Gunstru, J. D. Van Tuyl, John Steffens.

Marcus Raincoat Co., Cleveland, \$20,000. Sidney N. Weitz, Marc. J. Groesman, A. L. Baymore, Harry Pott, Fred B. Fishman.

H. R. Walker Co., Cleveland, \$25,000. George Q. Keeley, Maurice Bornstein, A. J. Roth, A. M. Kelley, M. Bernhard.

Hartford Co., Canton, \$20,000. E. H. Elman, F. V. Hurley, L. E. Alsbaugh, Ada Berlin, L. A. McCally.

Hotel Rogge Co., Zanesville, \$150,000. Albert Rogge, Charles A. Rogge, C. Yeazel, Charles Lonon, Clement D. Brown.

Johnson Belting Co., Cleveland, \$10,000. C. B. Johnson, F. W. Johnson, Rudolph Kalaneka, E. H. Price, M. E. Price.

United Lubricant Co., Cleveland, \$50,000. F. C. Moore, L. B. Davenport, Charles Follett, Walker H. Nye, Neil Beall.

R. & S. Non-Deflecting Valve Co., Elyria, \$200,000. Ralph Murbach, Carl Ingwer, B. E. Richardson, A. G. Smith, L. B. Fauver.

Alvada Mutual Telephone Co., Alvada, \$10,000. J. P. Welly, L. H. Wangler, Fred J. Welly, F. W. Koeffler, John L. Kinn.

Valle-Kimes Co., Dayton, \$1,000. Daniel Blau, Lester L. Cecil, Herbert F. Good, M. F. Sheeler, I. Webb.

Joseph E. Lowes Co., Dayton, \$30,000. Joseph E. Lowes, Herbert S. Boren, Robert D. Burtnett, Clarence J. Steiner, Philip E. Worman.

Bishop Realty Co., Columbus, \$50,000. J. G. Bishop, E. W. Smith, A. M. Johnson, C. A. Bauer, S. P. Wolford.

South Side Transfer and Cold Storage Co., Youngstown, \$40,000. A. N. Butler, W. T. Beardmore, Charles H. Loudahl, Cecil Owens, M. R. Butler.

Canton Slag Co., Canton, \$50,000. Richard D. Logan, H. M. Sharp, W. G. Scheub, C. R. Menely, Joe O. Lavenberg.

Flatau Realty Co., Cleveland, \$10,000. Louis Flatau A. J. Halle, S. B. Miller, D. B. Stone, B. R. Kohn.

Garfield Investment Securities Co., Cleveland, \$10,000. M. G. Lessem, P. C. Kreitz, Charles Roeder, H. W. Christman, Albert A. Woldman,

Webster Light & Power Co., Luckey, \$75,000. Ruben Carnz, E. J. Miller, Jacob Lehman, A. R. Metzger, J. L. Schwartz, John Gottechoik, Joseph A. Stebel, O. D. Hagerty.

Street Alfalfa Medicine Co., Troy, \$150,000. Frank H. Sterrett, G. J. Plankenbaum, William K. Wier, C. R. Hinkle, Jenn Plankabaum, F. Will Steel.

Dover Ice and Storage Co., Dover, \$75,000. E. J. Horn, H. H. Hostetler, A. A. Horn, J. E. Allman, G. T. Duefly.

John F. High Co., Cleveland, \$10,000. G. C. Vrooman, W. H. Annat, L. A. O'Neill, N. M. Dwyer, M. C. Goetz.

East Park Realty Co., Akron, \$50,000. G. W. Auton, C. B. Hays, T. H. Hodge, H. L. Pardee, L. M. Brant.

Wilmore Realty Co., Cleveland, \$30,000. John E. Morris, Walter E. Myers, M. E. Matson, M. L. Harger, J. N. McCall.

Southwest Lumber and Timber Co., Youngstown, \$100,000. George W. Haines, C. A. Loveland, O. C. Haines, F. L. Loveland, Fred J. Warnock.

Home Building Show Co., Dayton, \$5,000. Sidney S. King, Henry W. Roquarth, A. W. Bockel, Thomas J. Calahan, Clarence E. Rice, H. M. Rowe, W. B. Stewart.

Cafmet Oil Co., Cincinnati, \$25,000. H. A. Hollowell, R. C. Barnard, A. Louis Betz, E. H. Mondrach, Theodore Luth.

Proper Antiseptic Laboratories Co., Cincinnati, \$20,000. Nathan Proper, Charles W. Machenbach, Max Steinberger, David Fufeld, W. S. Hewitt.

Midwest Products Co., Cleveland, \$10,000. Nathan Davis, M. A. Friedman, P. B. Draeger, E. W. LeFever, Samuel Horwitz.

Plastek Products & Paint Co., Cleveland, \$10,000. Harry W. McLeod, C. G. Smith, William Ruthenberg, W. J. Morris, I. E. Quentzler.

Samuel Potter Burrill Research, Inc., Cleveland, \$10,000. Samuel Potter Burrill, C. A. Bowman, Edna T. Burrill, Walter C. Hagan, Joseph B. Diener.

Ohio Ink and Chemical Co., Columbus, \$100,000. William S. Straud, John B. Warren, Joseph W. Hohl, Michael F. Higgy, Herbert C. Sherman.

People's Telephone Co., Cary, \$25,000. S. A. Chesebrough, J. A. Newcomer, G. A. Kemmerly, O. N. Copley, Edw. Davidson.

Production Machinery Co., Cincinnati, \$53,750. E. R. Grossman, Robert Killison, H. A. Grossman, C. C. McGary, W. H. Burtner, Jr.

Washington Boulevard Realty Co., Cleveland, \$10,000. E. E. McCloud, M. Grady, Sam B. Fitzsimmons, H. C. Berghaus, John A. Nash.

Burdette-Murray Co., Cleveland, \$27,500. J. C. Murray, Alonzo M. Snyder, Robert E. Roehm, George M. Roudebush, N. I. Young.

Complete Roofing Co., Cleveland, \$100,000. F. A. Tenny, P. G. Baum, Max Greenberg, Henry A. Marting, Vida Sanderson.

Fidelity Properties Co., Cleveland, \$50,000. E. B. Krueger, A. W. Thomas, H. E. Hibbert, M. A. Sellberg, H. R. Burnage.

Redick Construction Co., Cleveland, \$25,000. H. P. Redick, Rudolph C. Baucrole, Michael J. O'Connell, G. B. Jackson, E. Brown.

Frank Chambers, Cleveland, \$5,000. Henry Newhauser, S. A. Grossner, I. R. Triska, Joseph H. Mellen, Joseph L. Wright.

King Horse & Mule Co., Cincinnati, \$7,500. John A. King, A. Goodman, Jacob W. Goldblatt, G. G. Harbach, Joseph L. Meyer.

Michigan Rim Mfg. Co., Toledo, \$— Joseph H. M. Michon, Pearl M. Davidson, William H. Albrecht, Jr., William F. Pinch, Herman C. Hinckfoth, Andrew J. Verwys, Louis W. Busch.

Highland Tire and Battery Service Co., Norwood, \$10,000. B. E. Murphy, Earl Whitaker, Norma Murphy, Stanley E. Murphy, Virginian Murphy.

Wauseon Housing Co., Wauseon, \$50,000. Charles L. Mathews, F. R. Guilford, C. F. Stotzer, Frank H. Reighard, L. M. McDonald.

Clark Commissary Co., Cleveland, \$25,000. Perry D. Caldwell, F. M. Lavelle, T. A. Gillespie, D. L. Schwab, F. W. Brunner.

Best Medicine Co., Dayton, \$100,000. John H. Rest, George W. Moss, H. C. Ludwig, W. H. Mead, Jr., C. W. Shade.

Holgate Co-operative Milling Co., Holgate, \$50,000. John W. Muntz, M. P. Shelly, D. J. Croll, John Boddy, W. J. Snyder, S. L. Snyder.

Dolomite Products Co., Cleveland, \$400,000 to \$700,000.

Toledo Glove Mfg. Co., Toledo, \$25,000 to \$150,000.

Costley-Evans Co., Cleveland, \$5,000 to \$20,000.

Welever Piston Ring Co., Toledo, \$20,000 to \$100,000.

Presto-Felt Mfg. Co., Toledo, \$10,000 to \$50,000.

Dayton Confectionery Co., Dayton, \$5,000 to \$15,000.

Lauble Stone Co., Nepbunn, \$10,000 to \$25,000.

Timken-Detroit Axle Co., Canton, \$3,000,000 to \$18,000,000.

Bellevue Mfg. Co., Bellevue, \$25,000 to \$100,000.

Tanlan's Baking Co., Columbus, \$75,000 to \$100,000.

Rybolt Heater Co., Ashland, \$60,000 to \$100,000.

Lothro Auto Sales Co., Athens, \$100,000 to \$150,000.

Tanlan's Baking Co., Columbus, \$75,000 to \$70,000.

Crown Overall Mfg. Co., Cincinnati, \$450,000 to \$437,000.

Henderson Motor Car Co., Warren, \$25,000 to \$75,000.

Springfield Baking Co., Springfield, \$30,000 to \$100,000.

June Street Building, Savings & Loan Co., Cincinnati, \$1,000,000 to \$2,000,000.

Mollink Mfg. Co., Toledo, \$150,000 to \$225,000.

Floom-Fleck Co., Tiffin, \$50,000 to \$150,000.

Cleveland Realization Co., Cleveland, \$350,000 to \$500,000.

Hardman Rubber Co., Cleveland, \$2,000 to \$20,000.

Leader Shoe Co., Elyria, \$20,000 to \$40,000.

Sidney Candy Co., Sidney, \$25,000 to \$50,000.

Farm Mortgage Co., Cincinnati, \$100,000 to \$1,000,000.

Peerless Foundry Co., Cincinnati, \$200,000 to \$500,000.

Mahoning Paint & Oil Co., Youngstown, \$20,000 to \$100,000.

Decreases

Cincinnati Discount Co., Cincinnati; \$550,000 to \$250,000.

Ullman-Einstein Co., Cleveland; \$400,000 to \$15,000.

Dayton Confectionery Co., Dayton, \$15,000 to \$5,000.

Columbus Ideal Products Co., Columbus, \$5,000. Evan Yost Evans, A. E. Turner, Arthur Wagonman, Louis A. Alcott, Anthony J. Nelson.

Hendrix-Stechler Co., Dayton, \$6,000. F. W. Stechler, W. W. Hendrix, Mrs. W. W. Hendrix, Harry Potasky, Ann M. Stechler.

Jefferson-Main Arcade Market Co., Dayton, \$100,000. J. E. Lowes, E. R. Arn, C. H. Breidenbach, W. K. Marshall, Charles W. Hamiel.

United Labor News, Zanesville, \$150,000. Earl F. Kinkade, A. M. Abmeyer, Ralph W. Schreiber, Thomas A. Beckley, John L. Gressel, Thomas A. Ruhl, J. W. Callhan, Gus Shaner, N. E. Settle.

Collapsible Bucket Co., Portsmouth, \$10,000. C. A. Crabtree, Paul C. Copelan, James Crabtree, D. J. Copelan, W. R. Sprague.

United Paint and Varnish Export Co., Cleveland, \$50,000. Harold T. Clark, F. S. Whitcomb, Andrew P. Martin, E. L. Fleming, Howard L. Barkdull.

Brookwood Club Co., Euclid Village, \$10,000. Marten C. Krogh, David Aithen, Albert H. Dickey, Neal M. Wiegand, W. D. Bessell.

Buckeye Welding and Supply Co., Cleveland, \$25,000. W. H. Martin, H. B. Howells, Claude W. Shimmom, Harry C. Gahn, H. Sharpe.

Ten Thousand Euclid Co., Cleveland, \$50,000. Edw. C. Davoust, C. A. Alexander, Trafton M. Dye, M. J. Beulow, J. M. McDonough.

Murray Mfg. Co., Cleveland, \$750,000. Owen A. Locke, Jultan W. Tyler, Leslie Nichols, W. B. Cockley, R. C. Hyatt.

Industrial Savings & Loan Co., Cincinnati, \$300,000. Horace Sudduth, H. M. Higgins, H. S. Dunbar, E. B. Gray, W. W. Cordell, James N. Thompson, Morris S. Watton, W. L. Anderson.

Increases

Ohio-Gulf Petroleum Co., Columbus, \$10,000 to \$1,500,000.

Security Land Co., Toledo, \$10,000 to \$100,000.

Akron Sausage Co., Akron, \$2,000 to \$25,000.

L. Wise Bros. Co., \$50,000 to \$100,000.

Harvey-Loehr Lumber Co., \$60,000 to \$125,000.

Springfield Oil Products Co., Springfield, \$150,000 to \$500,000.

PUBLIC UTILITIES COMMISSION

No. 1816—In the Matter of the Application of The Elyria Telephone Company for Authority to Issue \$65,000.00 Common Stock. Prayer Granted.

(Dated November 28, 1919.)

This day this matter came on for final consideration upon the application of The Elyria Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of the Commission to issue common capital stock of the par value of sixty-five thousand dollars, the proceeds arising from the sale thereof to be used to discharge applicant's indebtedness, evidenced by short term notes, of the principal sum of \$60,000.00 created and incurred for and on account of the provision of net additions to its capital investment and the discharge of its floating indebtedness, in the sum of \$5,000.00 created and incurred for the same purpose to September 30, 1910.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the applicant has created and incurred, between the dates July 1, 1917, and September 30, 1919, (both inclusive), for and on account of the provision of additions, extensions and improvements to its facilities, an indebtedness of the sum of \$84,402.58, of which \$60,000.00 is now represented by short-term notes, and that the issue of applicant's said capital stock of the par value of \$65,000.00 is reasonably required and the money to be procured thereby necessary for the payment and discharge to the extent of such proceeds, of said lawful indebtedness, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Elyria Telephone Company be, and hereby it is authorized to issue its common capital stock of the total par value of sixty-five thousand dollars (\$65,000.00) and that said

Errata.

Through inadvertence pages 281 to 380 and 437 to 536 were erroneously numbered. The volume is complete. There are no pages missing. We are calling attention to this so as to avoid confusion.

capital stock be sold for the highest price obtainable, but for not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose and no others, to-wit: The payment and discharge, in part, (and primarily that portion thereof represented by short-term notes) of applicant's indebtedness of the sum of \$84,402.58, created and incurred between the dates July 1, 1917, and September 30, 1919, both inclusive, for and on account of the provision of additions, extensions and improvement to its facilities, \$60,000.00 whereof is now represented by short-term notes. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1306—In the Matter of the Application of Mahoning and Shenango Railway and Light Company for Authority to Issue and Sell its Preferred Stock.

(Dated December 1, 1919.)

Order on Eighth Supplemental Application.

The Commission having heretofore, to-wit: Upon the twenty-seventh day of October, 1919, by orders duly made and entered herein upon the pleadings filed and considered as the sixth and seventh supplemental or substitute applications, consented to and authorized the issue and sale, for the highest price obtainable, but not less than ninety percentum of the par value thereof, of applicant's first and consolidated refunding mortgage, series B, six per cent. gold bonds of the total principal sum of four hundred and fifty-one thousand, eight hundred dollars, this day comes the said Mahoning and Shenango Railway and Light Company and, (by pleading proffered for filing under the caption, "in the matter of the application of Mahoning and Shenango Railway and Light Company for authority to pledge bonds," but, for the purpose of this Commission, filed as the eighth supplemental application herein), represents and shows to the satisfaction of this Commission that, subsequent to the entry of the aforesaid orders, it made due and diligent effort to obtain a market for said bonds and to sell the same, but that, due to the prevailing financial conditions, it has been unable to obtain a market for and sell said bonds at the price

at which it is authorized to sell the same; that, in order to provide funds for betterments, improvements and extensions, it is imperative that it immediately obtain three hundred thousand dollars, and that it has arranged with four banks, two in New York City and two in Philadelphia, for a loan of three hundred thousand dollars, two of one hundred thousand dollars each and two of fifty thousand dollars each, each of such loans to be secured by a deposit, as collateral security thereof, of applicant's first and consolidated mortgage bonds equal to one hundred and twenty-five percentum of the principal amount of such loans. It is, therefore,

Ordered, that the orders, so made and entered herein as of date October 27, 1919, be, and hereby they are modified and supplemented to provide that, pending the sale of said bonds pursuant to the terms and conditions therein prescribed, the said Mahoning and Shenango Railway and Light Company be, and hereby it is authorized to pledge three hundred and seventy-five thousand dollars principal sum of applicant's said first and consolidated refunding mortgage, series B, six per cent. gold bonds as collateral security for loans, which loans shall be of the greatest sum negotiable, but not less than eighty percentum of the par value of the bonds so pledged as collateral security therefor.



No. 1130—In the Matter of the Joint Application of The Fremont Home Telephone Company of Fremont, Ohio, and David R. Forgan, Edgar S. Bloom and Frank F. Fowle, as Receivers of Central Union Telephone Company, for Such Consent and Approval of the Commission as May be Necessary to Permit Them to Purchase and Sell Certain Telephone Property and to Enter Into Contracts With Each Other That Will Enable Them to Interchange Toll Business.

(Dated November 28, 1919.)

**Entry Dismissing Application For Modification of Order of
March 21, 1918.**

This day this matter came on for consideration upon the application of The Fremont Home Telephone Company for such modification and amendment of the order, made and entered herein as of date March 21, 1918, as will permit and authorize it to establish, maintain, impose and collect for the furnishing of telephonic exchange service in the city of Fremont and village of Lindsey, Ohio,

prior to the unification of its property including that property heretofore acquired of the Receivers of Central Union Telephone Company), the schedule of rates, charges, tolls and rentals hereinbefore found and determined by this Commission to be reasonable and just for the furnishing of said service by such unified properties; the protests thereto and the evidence introduced upon the hearing thereof.

Upon consideration whereof, and being fully advised in the premises, the Commission finds that said application should be, and hereby it is denied.

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No. 1795—In the Matter of the Application of The New Madison Lighting Company, of New Madison, Ohio, to Issue \$2,200.00 of Common Stock, for the Purpose of Reimbursing the Treasury for Moneys Paid Out for Extensions and Betterments Made by Said Company in the Village of New Madison, Ohio. Prayer Granted.

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(Dated November 13, 1919.)

This day this matter came on for final consideration upon the application of The New Madison Lighting Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue common capital stock of the total par value of two thousand, two hundred dollars, the proceeds arising from the sale thereof to be applied toward the partial reimbursement of applicant's treasury for the sum of \$2,439.97 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, to October 25, 1919, for the construction of additions, extensions and improvements to applicant's plant and facilities.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that, to and including the twenty-fifth day of October, 1919, and within the five years preceding the date of the filing of the application herein, the applicant actually expended from its treasury the sum of \$2,439.97 for the construction, completion, extension and improvement of its

facilities, none of which money was obtained from the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said capital stock is reasonably required and the money to be procured thereby necessary for the reimbursement of its treasury for the aforesaid uncanceled capital expenditures therefrom, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The New Madison Lighting Company be, and hereby it is authorized to issue its common capital stock of the total par value of two thousand, two hundred dollars (\$2,200.00), and that said capital stock be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be used for the partial reimbursement, and to the extent of said proceeds, of applicant's treasury for the sum of \$2,439.97 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, to and including October 25, 1919, for the construction of additions, extensions and improvements to its plant and facilities, as more fully set forth in the detailed statement, marked exhibit A, appended to the application herein and hereby made a part of this order; nor shall said proceeds of said capital stock be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1803—In the Matter of the Joint Application of The Chesapeake and Potomac Telephone Company of West Virginia and The Farmers Telephone Company. Prayer Granted.

(Dated November 13, 1919.)

This day this matter came on for final consideration upon the joint application of The Chesapeake and Potomac Telephone Company of West Virginia, (a corporation duly organized and existing under and by virtue of the laws of West Virginia and duly authorized to do business in Ohio), and The Farmers Telephone Company, (a corporation duly organized and existing under the laws of Ohio

and engaged in operating a telephone system in Caldwell, Belle Valley and elsewhere in Washington, Noble and Monroe counties, Ohio), asking the consent to and approval, by this Commission, of the making of a certain contract or articles of agreement providing, among other things, for the retention of an existing physical connection between applicants' respective systems and the continued interchange of service thereby.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purposes of this proceeding, that the convenience of the public will be promoted by the retention of said physical connection between the applicants' systems and the continued interchange of toll business thereby, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that its consent and authority for the retention of said physical connection and the continued interchange of toll business by the applicants should be granted. It is, therefore,

Ordered, That said The Chesapeake and Potomac Telephone Company of West Virginia and said The Farmers Telephone Company be, and hereby they are authorized to retain the physical connection now existing between their respective systems and to continue to interchange toll business as provided by law. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

ATTORNEY GENERAL

Where a Bank Furnishes a Surety Other Than a Surety Company for the Security of the Deposit of Public Funds, it is Not Legal to Accept as Collateral Security Bonds Other Than Those Defined in Section 4295 General Code, to Make Surety Good and Sufficient as Required by That Section.

No. 852—(Opinion Dated December 6, 1919.)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your recent request for the opinion of this department on the following:

"The G. S. and Trust Company, of C., Ohio, is protesting against a ruling made by one of the state examiners relating to the kind of security deposited with the treasurer of the city of C., securing city money on deposit. The state examiner rules that the personal bond offered by the trust company, which in turn was secured by collateral other than interest bearing obligations of the United States, etc., was not sufficient under the statutes of the state regulating such security. This section is number 4295. The contention of the G. S. and Trust Company is that under the second provision of said statute, reading as follows: 'or furnish good and sufficient surety', that the law has been complied with and that the examiner is in error when he rules that the collaterals of the personal bond must be interest bearing obligations of the United States or such other bonds as are described in section 4295 in the third provision.

"May the city treasurer legally accept as security for deposit of public funds collateral securities other than those listed in section 4295 G. C., to further secure personal bond furnished by the bank?

"(By other securities in our question we mean industrial bonds or mortgages not authorized by sections 4295 or 2288-1 G. C.)"

The brief of the C. S. & Trust Company has also been noted and considered.

Section 4295 G. C. is the section under which your question arises and in part it is as follows:

"The council may provide by ordinance for the deposit of all public monies * * * in such bank * * * as offers

* * * the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state or furnish good and sufficient surety or secure said monies by a deposit of bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia."

Other requirements and restrictions as to such bonds are set out in the statute, but it is not necessary to quote that part of the section in full.

It will be observed that this section authorizes council to deposit such money where the security is affected by any one of the three methods therein provided and that these methods appear to be alternatives.

The matter reaches this department in your effort to determine which, if either, of the positions taken by your examiner and the trust company, above referred to, is correct.

On the one hand your examiner's position appears to be, as stated in your letter, that "he rules that the collaterals of the personal bond must be interest bearing obligations of the United States or such other bonds as are described in section 4295 in the third provision." On the other hand the trust company's position may be shown by a quotation from page 2 of their brief, as follows:

"We contend that if we comply with the second alternative by furnishing 'good and sufficient surety' we have complied with the requirements of section 4295 of the General Code, particularly when the form of assurance not only complies with the law as to form, but has been approved by the proper municipal officers, authorized by law to pass upon the sufficiency thereof and approve the same.

* * * * *

"We understand that your office has taken the position that the form of assurance referred to in the second alternative above referred to should be ignored and that the depository banks should comply either with the first alternative by giving a surety company bond, or with the third alternative by pledging United States, state, county or other bonds or obligations of political sub-division as expressly defined in section 4295.

"The undersigned respectfully submits that the second alternative form of security is not only warranted by law, but when supplemented by property or securities to an excessive margin of safety meets the entire power of the act and

furthermore that the property or securities which make the surety 'good and sufficient' as required by section 4295 need not be bonds of the United States nor of the state or the political sub-division thereof as defined in the third alternative."

It is noted that reference is made in the brief of the trust company to sections 115 and 128 of the revised ordinances of the city of Cleveland. These sections designate certain municipal officers as the depositary commission and require their approval of the bond or securities offered by the depositary. No reference to any other Cleveland ordinance is made which would indicate that there is any conflict between the ordinances or charter provision of Cleveland and section 4295, and for this reason it is assumed that section 4295 governs and this opinion is limited to that section and the ordinance to which attention is called, as above indicated.

The question involved may be raised and re-stated in another way, viz., does the word "surety" refer to persons contracting in and sustaining the relation of suretyship or does it refer to things such as securities, and it is used in the sense of "security"? Are the three alternative methods provided in section 4295 separately exclusive, or may they be used conjunctively in furnishing the security for public funds?

The purpose of depositary laws, as pointed out in Opinion No. 761, addressed to your department under date of November 7, 1919, is "to safeguard and insure the proper custody of public money, but they go further than that and require that such part of the increment of the public funds as is agreed upon shall inure to the benefit of the public." To this it may also be added that the evident purpose was to secure for the public the highest possible rate of interest, with the minimum risk. As to the meaning of the phrase "good and sufficient surety", as used in what may be termed the second alternative, it is suggested that in the construction of statutes words are to be given their ordinary meaning rather than a special restricted or enlarged meaning and must be interpreted in connection with other parts of the act in which it is used.

What is the meaning of the word "surety" as used in that phrase?

It is defined in Standard Dictionary to be:

"1. A person who engages to be responsible for the debt, default or miscarriage of another; guarantor; bail.

"2. A pledge of money deposited or of credit given to secure against loss or damage; * *

"3. That which gives security or confidence; * * * the state of being secure * * *."

Bouvier's law dictionary, page 3191, defines "surety" to be:

"A person who binds himself for the payment of a sum of money or for the performance of something else for another."

In Words and Phrases, Vol. 8, page 6809, numerous definitions from different jurisdictions are given, which are, as to the pertinent part quoted here:

"A surety is a person who binds himself."
Young v. McFadden, 125 Ind., 254.

" * * * In law one who enters into a bond,"
etc. Pitkins v. Boyd (Iowa), 4 Green, 255.

A surety is defined as "a person who," etc., citing authorities from numerous states.

These definitions are recognized by the supreme court of this state in Wise v. Miller, 45 O. S., 399, where the court quoted Smith v. Sheldon, 35 Mich., 42:

"A surety, it is said, 'is a person who being liable to pay a debt,' etc.

These authorities are cited as showing that the word "surety" had an accepted meaning both in popular usage and in law, which meant a person sustained certain legal relations.

It appearing reasonably certain that this word had an accepted meaning, that meaning must be attributed to the legislature unless a different meaning is evidenced by other provisions of the section.

It is noted that the grant and direction of this state is to the city council, which may do certain things when certain requirements are met, and these are stated disjunctively and in substance are: (1) giving a surety bond, (2) furnishing good and sufficient surety, and (3) depositing bonds or other obligations. The first two contemplate the same method, viz., some corporation or person in the capacity of surety, incurring a secondary liability in behalf of the principal and for his benefit.

The third alternate substitutes things, viz., certain kinds of bonds and obligations, for persons, and it is noticeable also that in the substitution great particularity is used in defining the character of bonds and obligations referred to.

It would seem that these different alternative plans authorize the council to deposit the public money in a bank which (1) gives the surety bond or (2) furnishes a good and safe surety, or (3) furnishes the prescribed security by the hypothecation of the bonds described and that each plan is exclusive and may not be used in whole or in part with the other alternative. However, in view of your exact question, the final consideration and decision on this question is withheld.

It may be claimed with logical justification that the phrase "good and sufficient surety" implies a self sufficiency in the surety which is inconsistent with the idea of re-enforcing such suretyship agreement with collateral security. The requirement of such collateral carries with it an implied admission of insufficiency of the surety, whose surety obligation of itself, under the statute, must be "good and sufficient."

The result to which these observations lead may be regarded as rather technical, but it must be remembered that the legislature was dealing with the subject of public money and great care is attributable to it in safeguarding its deposit in every possible practical manner. It is common knowledge which is also attributable to the legislature that the value of industrial stocks and other securities fluctuates greatly and does not have the permanence and stability in value and security approaching the value and security of the bonds and obligations referred to in section 4295, and if the pledging of such non-statutory bonds and obligations were permissible under the second alternative, the great care and particularity with which the legislature defined the bonds in the third alternative would seem to have been useless.

Therefore the character and purpose of this legislation furnishes a practical reason for agreement with the conclusion technically arrived at, which is that where a bank furnishes a surety (other than a surety company) as security for the deposit of public funds, it is not legal to accept as collateral security bonds other than those defined in section 4295, to make such surety "good and sufficient," as required by that section.

Non-Chartered as Well as Chartered Municipalities May Enact Proper Ordinances Regulating the Carrying of Concealed Weapons—Justices of the Peace, Mayors and Judges of Police Courts Have Jurisdiction as Examining Magistrates in Cases Arising Under Section 12819 General Code, But Do Not Have Final Jurisdiction—Within the Limits of the Power Granted to Them, Municipalities May Pass Ordinances Regulating the Same Acts as State Statutes Have Regulated So Long as the Said Ordinance Prescribed a Punishment Which Limits the Offense to a Misdemeanor. If a City Ordinance Should Prescribe Such a Punishment as Would Result in Placing the Accused in Jeopardy When Being Prosecuted Under Said Ordinance, This Would Defeat the Operation of the State Statutes Providing an Offense for the Same Act and Rendering Said Ordinance Invalid—The Above Named Magistrates May Have Jurisdiction Under Ordinances Above Referred to.

No. 854—(Opinion Dated December 6, 1919.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: I am in receipt of your letter of recent date in which you submit the following question:

"We are taking it in view of opinion of the Attorney General, page 1839 of the 1916 Annual Reports, that a municipality may not legally enact an ordinance covering the carrying of concealed weapons, and in connection therewith we respectfully request your written opinion upon the following matter:

"In view of section 12619 G. C. (107 O. L. 28), may a justice of the peace, mayor, judge of police court or judge of municipal court legally have jurisdiction in case of carrying concealed weapons?"

In reference to the first proposition presented as to the legality of an ordinance enacted by a municipality, regulating the carrying of concealed weapons, will say, that municipal corporations in their public capacity possess such powers and only such powers as are expressly granted by statute, and such as are by implication essential to carry into effect those that are expressly granted, together with such powers as are granted to them by the amended constitution of 1912.

While in the general and special powers granted by the legislature there is no express provision authorizing the enactment of

ordinances by municipalities covering the carrying of concealed weapons, section 3658 of the General Code, which relates to the general powers granted to a municipality, provides as follows:

"To prevent rioting, gambling, noise and disturbance, indecent and disorderly conduct or assemblages, and to preserve the peace and good order, and to protect the property of the corporation and its inhabitants."

It would seem that by implication to enable a municipality to carry into effect the express provisions of this section "to preserve the peace and good order" the power to enact ordinances regulating the carrying of concealed weapons is reasonably implied.

Section 3628 G. C., which relates to the powers of municipalities, provides as follows:

"To make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months."

Article XVIII, section 3, of the amended constitution of Ohio provides as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

The Supreme Court of Ohio, in the case of city of Fremont v. Keating, 96 I. S., 468, clearly holds that under said constitutional provision municipalities may "adopt and enforce within their limits such local police, sanitary and other similar regulations" as are not in conflict with general laws. Said opinion makes no distinction as to the application of such rule as between chartered and non-chartered municipalities.

Therefore, in view of the foregoing, I am of the opinion that non-chartered as well as chartered municipalities may enact proper ordinances regulating the carrying of concealed weapons.

In answer to your second inquiry relative to the jurisdiction of certain named courts, in cases arising under section 12819 G. C. (107 O. L. 206), you are advised that said offense as prescribed by said statute constitutes a felony under laws of this state.

Section 13422 G. C., which relates to the jurisdiction of justices of the peace, provides as follows:

"A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the

county in which he is elected and where he resides, on view or on sworn complaint, to cause a person, charged with the commission of a felony or misdemeanor, to be arrested and brought before himself or another justice of the peace, and, if such person is brought before him, to inquire into the complaint and either discharge or recognize him to be and appear before the proper court at the time named in such recognition, or otherwise dispose of the complaint as provided by law. He also may hear complaints of the peace and issue search warrants."

Section 4534 G. C., which relates to the jurisdiction of mayors in felony cases, provides in part as follows:

"In felonies, and other criminal proceedings not herein provided for, such mayor shall have jurisdiction and power, throughout the county, concurrent with justices of the peace."

Section 4577 G. C., which relates to the jurisdiction of police courts, contains the following:

"The jurisdiction of such court to make inquiry in criminal cases shall be the same as that of a justice of the peace."

With reference to the jurisdiction of municipal courts it is necessary to look to the statute creating and establishing the power of said courts in their respective localities, to determine the extent of their jurisdiction. However, I am of the opinion that in most cases, if not in all cases, where municipal courts have been established their jurisdiction in felony cases is the same as that given to justices of the peace, mayors and police judges.

From the above it follows that said courts have jurisdiction as examining magistrates in cases arising under section 12819 G. C. However, said courts do not have final jurisdiction as under section 10 of the bill of rights of the Ohio constitution, the accused may not be convicted of the felony unless indicted by a grand jury, and the law does not provide for such action by a grand jury except in a court of common pleas, nor in fact do the statutes purport to confer upon said lower courts final jurisdiction in felony cases. However, the fact that section 12819 G. C., makes said offense a felony does not prevent a municipality from making the same act a misdemeanor by ordinance and granting final jurisdiction to proper tribunals in misdemeanor cases.

I am further of the opinion that a prosecution under such an ordinance does not prevent a prosecution under section 12819 G. C., as in the case of *Koch v. State*, 53 O. S. 433, the syllabus reads:

"A former conviction before a mayor for the violation of an ordinance is not a bar to the prosecution of an information charging the same act as a violation of the statute."

The rule in Ohio seems to be that municipalities, within the limits of the power granted to them, may pass ordinances regulating the same acts as state statutes have regulated so long as the said ordinance prescribes a punishment which limits the offense to a misdemeanor. If a city ordinance should prescribe such a punishment as would result in placing the accused in jeopardy when being prosecuted under said ordinance, this would defeat the operation of the state statute providing an offense for the same act and render said ordinances invalid.

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The Provisions of Section 20 of Article 2, of the Constitution do Not Apply to Members of Rural Boards of Education and They Can Draw the Increased Compensation as Provided for in Section 4715 General Code, 108 O. L. 506, Even Though They Were Holding Office at the Time Said Amendment Became Effective, for the Reason That They do Not Draw a Salary as Contemplated in the Constitution, But Merely Compensation—Members of Rural Boards of Education Attending Regular Meetings of Such Board of Education, if Such Meetings are Held on and After August 28, 1919, (H. G. 43, 108 O. L.) are Entitled to Two Dollars Compensation for Such Attendance Where the School District Contains Sixteen Square Miles or More, and Members of Boards of Education in Rural School Districts Containing Less Than Sixteen Square Miles Are Entitled to Receive One Dollar Compensation for Each Meeting Attended; But no Member of any Rural Board of Education Shall be Paid for More Than Ten Meetings During the Year 1919, and Only Regular Meetings of the Board of Education Can be Paid for.

No. 827—(Opinion Dated December 2, 1919.)

Hon. C. M. Caldwell, Prosecuting Attorney, Waverly, Ohio.

Dear Sir: Acknowledgment is made of your recent request for an opinion upon the following statement of facts:

"In the recent amendment to section 4715, General Code, compensation is provided for ten meetings instead of five, as per original section.

"The question arises as to when the members of rural boards of education begin to draw the increased compensation.

"I have given it as my opinion that the salary of an officer cannot be increased during his term of office; therefore members who were elected two years ago for four years could not draw the increased compensation for two years to come. Members of these boards naturally do not agree, but wish to begin the increased compensation at once.

"Please give me your opinion. Will the increased compensation begin in each instance with the new term of a member of such board, or will it begin at the time the recent act became effective?"

Your question grows out of the amendment made to section 4715 G. C., as appearing in house bill 43, which was filed in the office of the secretary of state on May 29, 1919, and became effective 90 days thereafter, viz., August 28, 1919.

Section 4715 G. C., as amended in 108 O. L., 506, reads as follows:

"Each member of the board of education of rural school districts, except such districts as contain less than sixteen square miles, shall receive as compensation two dollars for each regular meeting actually attended by such member, and members of such boards in rural school districts containing less than sixteen square miles shall receive one dollar for each meeting, but for not more than ten meetings in any year. The compensation allowed members of the board shall be paid from the contingent fund."

You indicate that since members of boards of education are officers elected for a definite term, there can be no change in their compensation because of the provisions of section 20, article 2 of the constitution, which reads as follows:

"The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

It is noted in your statement of facts that you use the word "salary" as being synonymous with "compensation", and it is therefore necessary to distinguish between these two terms. Salary is always compensation, but compensation does not necessarily mean salary, as the courts have shown in a number of instances. Thus compensation might be salary, wages, hire, allowance, stipend, damages, or a number of other kinds of remuneration. Salary is but one kind of compensation and the constitution says that it is the salary of any officer during his existing term that shall not be changed unless the office be abolished.

"Worcester defines salary to mean an annual or periodical payment for services; a stipulated periodical recompense." *School Commissioners of the city of Indianapolis vs. Wasson*, 74 Ind., 133.

Webster defines salary to be "the recompense or consideration stipulated to be paid to a person for services; annual or periodical wages or pay; hire."

The Century dictionary defines salary to be "the recompense or consideration stipulated to be paid to a person periodically for services."

"The reward paid to a public officer for the performance of his official duties." *Bouvier's Law Dictionary*, 492; *State vs. Raine*, 49 O. S., 580.

The Standard dictionary defines compensation as pecuniary amends for loss, privation or injury. The same dictionary defines salary to be a periodical allowance made as compensation for regular work.

"Salary is a fixed, annual or periodical payment for services, depending upon the time, and not the amount of services rendered."

Thompson v. Phillips, 12 O. S., 117;
Landis v. Lincoln County, 31 Ore., 424;
State v. Barnes, 24 Fla., 29;
Castle v. Lawler, 47 Conn., 340;
Commonwealth v. Butler, 99 Pa., 535.

"Salary is a fixed compensation which is paid at stated times." *Dane v. Smith*, 54 Ala., 47.

"Salary * * * does not include money paid out to others as expenses in performing the duties of the office." *Windmiller v. The People*, 78 Ill. App., 273.

"Compensation * * * should not be construed as synonymous with salary, but that a sum fixed as compensation should include not only the sum intended for the treasurer's personal services, but also the allowance intended for clerk hire, fuel, etc." *Kilgore v. The People*, 76 Ill., 548.

"The term compensation in its ordinary acceptation, applies not only to salary, but to compensation by fees for specific services * * *." *Commonwealth v. Curtis*, (Ky.) 55 Southwestern.

"As used in the constitution, Article 4, paragraph 26, forbidding the compensation of any officer to be increased or diminished during his term of office, the word compensation signifies a return for the services of such officers as receive a fixed salary payable out of the treasury of the state, and does not and was not intended to apply to the remuneration of that large class of officers such as sheriffs, constables, clerks of

courts and other officers who receive specific fees for services as they are from time to time required to render them." *State v. Kalb*, 50 Wis., 178.

See also *Milwaukee County Commissioners v. Hackett*, 21 Wis., 613.

Possibly the best Ohio case in point as to whether these members of rural boards of education are entitled during their term to receive additional compensation for their attendance at regular meetings, is that of *Gobrecht v. Cincinnati*, 51 O. S., p. 68, the syllabus of which case reads as follows:

"1. Compensation of a public officer fixed by a provision that 'each member of the board who is present during the entire session of any regular meeting, and not otherwise, shall be entitled to receive five dollars for his attendance,' is not 'salary' within the meaning of section 20, of article 2, of the constitution, which provides that 'the general assembly, in cases not provided for in this constitution, shall fix the term of office, and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.'"

"2. An increase in the compensation of such officer during his term is not prohibited by the constitution."

In rendering the opinion upon this case, Judge Spear said:

"(a) Can the compensation of members of the board of legislation be increased during the existing term? * * *

"At the commencement of the term of plaintiff as a member of the board of legislation the compensation provided by statute was five dollars for attendance during the entire session of any regular meeting. By the act of February 19, 1892, it was provided that 'each member of the board who is present during the entire session of any regular meeting, and not otherwise, shall be entitled to receive ten dollars for his attendance, and shall receive no other compensation whatever.'"

"1. It is contended that section 20, of article 2, of the constitution, prohibits an increase of compensation during the existing term. That section is as follows: 'The General Assembly, in cases not provided for in this constitution, shall fix the term of office, and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.'"

"The question, therefore, is whether or not the pay of a member of the board is 'salary' within the meaning of the above section?"

"We think it is not. A general definition of salary includes compensation. General definitions do not, however, cover all cases. Salary is compensation, but under the section quoted, compensation is not, in every instance, salary. The point is emphasized by this court in the case of *Thompson v.*

Phillips, 12 Ohio St., 617, where it is said that 'it is manifest from the change of expression in the two clauses of the section that the word 'salary' was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense, of an annual or periodical payment for services—a payment dependent on the time and not on the amount of the services rendered.' And it was there held that a percentage compensation allowed by law to a public treasurer for official duties, could be altered during his term. It is the 'salary' which shall not be changed during the term, not necessarily, the compensation.

"We think the compensation in the case at bar comes within the principle of the case cited, although a per diem compensation. It is not within the meaning of the section quoted, 'salary'."

The board of legislation, mentioned in the above case, was one of the branches of the law making body of the city of Cincinnati under the form of government at that time in that city, and the members chosen for a definite time just as members of boards of education are so chosen today; the compensation of the members of the board of legislation was that they should receive a certain sum for actual attendance at each meeting of the board which they attended, which provision is practically the same as that governing compensation of members of rural boards of education provided for in section 4715 G. C. The compensation given to these members of rural boards of education for attendance at the regular meetings is dependent entirely upon their being present at such meetings and they are not paid for any meeting at which they are not present. On the other hand, if this remuneration which they received during the year was a salary, they would receive such salary whether they were present at such meetings or not, because salary is not wholly dependent upon duties performed, but is governed rather by the element of time.

In opinion 1370, issued by the attorney general, on July 27, 1918, (opinions of the attorney general, 1918, vol. 2, page 1034), the syllabus reads:

"Salary is incidental to the office and not to the performance of the duties of the same. Hence, so long as an officer does not resign, die or is removed, he is entitled to the salary to that office."

Attention is also invited to opinion 1630, issued by the attorney general on December 20, 1918, and appearing at page 1565, vol. 2, Opinions of the Attorney General for that year, the syllabus reading as follows:

"The provisions of section 20 of article 2 of the constitution do not apply to members of the board of deputy state supervisors of elections, and they can draw the increase compensation as provided for in section 4943 G. C. (107 O. L., 684), even though they were holding office at the time said amendment became effective, for the reason that they do not draw a salary as therein contemplated, but merely compensation."

In arriving at such conclusion the attorney general cited the more recent case of *State ex rel Taylor v. Carlisle, et al*, 3 O. N. P., (n. s.) 544, wherein the court was passing upon the question as to an increase in salary for the county commissioners of Franklin county from \$2,000 to \$3,500 per annum. Here the compensation of the county commissioners for any one year was to be determined by the amount of the tax duplicate in each county for real and personal property, and Judge Evans held that this did not come within the inhibition of section 20 of article 2 of the constitution. After holding that the law under which the county commissioners had formerly drawn compensation was unconstitutional and void, and hence in reality there was no law fixing the compensation of county commissioners until the amended act was passed, the court went further and used this language:

"The act does not provide for any definite fixed salary. The compensation depends on the aggregate of the tax duplicate from year to year. It may be less one year and greater another, depending on the variation of the tax duplicate, and the amount from one year to another can not be determined until December of each year when the aggregate is ascertained."

This statement of Judge Evans is also true of section 4715, providing for the compensation of members of rural boards of education, which says that they shall receive in the larger districts \$2.00 for each meeting attended and \$1.00 in the smaller districts for each meeting attended, but that not more than ten meetings shall be paid for to each individual in any year; so that while the duties of the members of the board of education in the rural district are practically the same, one would not be drawing the same remuneration as another if he failed to attend the same number of regular meetings. It would seem, therefore, in view of the decision of the court, above cited, that there is little question but what members of rural boards of education can receive additional compensation during the term for which they were elected, for the reason that they receive a compensation for duties performed and not a

salary for the time they are in office. On the other hand, there is no question that where a public officer receives a definite stated salary per annum such officer cannot be increased or diminished in his salary during the term for which he was either elected or appointed, neither does this rule hold on the classified civil service employes of the state because they are chosen for an indefinite period and not for a stated term.

You now ask me as to when the members of rural boards of education begin to draw increased compensation. The act amending section 4715, increasing such compensation, became effective August 28, 1919. An examination of the history of this statute shows that prior to its amendment in 104 O. L., it read:

"Each member of the township board of education shall receive as compensation two dollars for each meeting actually attended by such member, but for not more than ten meetings in any year. * * *."

This was amended in 104 O. L., page 135, to read:

"Each member of the board of education of rural school districts, except such districts as contain less than sixteen square miles, shall receive as compensation two dollars for each regular meeting actually attended by such member, but not more than five meetings in any year. * * *."

It will thus be seen that prior to the amendment in 104 O. L., every member of the township board of education, whether the district contained less than sixteen square miles or more, was to receive two dollars for each meeting, but not more than ten meetings in any year. Then came the amendment in 104 O. L., cutting down the number of meetings for which members could be paid from ten to five during any year, but excepting those districts which contained less than sixteen square miles, the members in such districts to receive nothing for their attendance at board meetings. The present legislature has now amended section 4715 by increasing the number of meetings from five to ten, for which payment can be made, and the law is similar to that in force prior to the amendment in 104 O. L., except that the present legislature has seen fit to provide that:

"Members of such boards in rural school districts containing less than sixteen square miles, shall receive one dollar for each meeting."

The two changes, therefore, are providing for the ten meetings instead of five in any year and permitting the payment of members of boards in those districts which contain less than sixteen square

miles by the provision that they shall receive one dollar for each meeting. This compensation is not salary to either of these two classes of members of rural boards of education, but is rather a compensation for time on a particular date, or payment for expenses in going to and from such meetings, the wear and tear on vehicles, the using of gasoline if motor cars are used, etc., and this is likely what the legislature had in mind when it changed this section and provided, as the law read some few years ago, that every member of a rural board of education should receive something in the way of remuneration for his attendance at the regular meetings of such board.

The more difficult question is as to the meaning of the words "in any year." This might mean the school year which begins on September 1st, and ends on August 31st, or it might mean one year's service on the part of a certain member, that is, twelve months from the time he might have been appointed to a vacancy in the middle of the calendar year, or, on the other hand, it might mean the calendar year which begins in January and ends in December, the latter being the year which governs the term of office of members of boards of education in that they enter upon their duties in January and retire in January, at the end of their term.

When the former compensation of these members of rural boards of education was reduced in 1914, by changing the number of meetings for which they could be paid from ten meetings to five meetings, the attorney general rendered an opinion (No. 1283, p. 1510, vol. 2, Opinions of the Attorney General for 1914), in which he held as follows:

"Your question presents an entanglement of legal difficulties. Whatever theory of solution is adopted in answer to the difficulty presented meets with an obstruction of serious legal consequences, and I am unable to arrive at any conclusion which presents a clearly smooth and satisfactory legal answer. I, therefore, feel urged to present that solution which has the best appearance of fairness and logical practicability. To my mind the best construction that the conflicting provisions can be given would be the holding that the officers in question be permitted to draw the salaries prescribed by statute prior to the amendment above referred to, for the entire year of 1914. I, therefore, advise that the officers be permitted to draw their salaries for the year 1914 under section 4715, General Code, under assumption that said statute remains in force and effect until the first Monday of January, 1915. The officers, therefore, will receive \$2.00 per meeting for each meeting actually attended during the year 1914, but for not more than ten meetings in the year. After that time, the compensation pre-

scribed by the amended statute above quoted may, in equity and fairness, be permitted to control."

Here the law changing the remuneration of members of boards of education became effective June 10, 1914, but the attorney general, "under assumption that said statute remains in force and effect until the first Monday in January, 1915", held that these school officers therefore would receive the old scale of salaries for the entire year of 1914, that is, ten meetings in the year, though the law after June 10, 1914, provided that but five meetings should be paid for. In this former opinion the attorney general held the calendar year was the year to be computed in construing the language of section 4715 G. C., and that is really the practicable year to consider in this matter, since members enter upon their duties in January and retire the following December. It having been established that compensation can be increased at any time during the term of an officer, clearly then those members of boards of education who are serving during the year 1919 are entitled to this increase in compensation, which the legislature desired they should have, but which many of them would not receive if construed to be effective in January, 1920, for the reason that a large number of members of boards of education in Ohio retire January, 1920, since the regular election for members of rural boards of education were held in November, 1919.

It is therefore the opinion of the attorney general that,

1. The provisions of section 20 of article 2 of the constitution do not apply to members of rural boards of education and they can draw the increased compensation as provided for in section 4715 G. C., 108 O. L., 506, even though they were holding office at the time said amendment became effective, for the reason that they do not draw a salary as contemplated in the constitution, but merely compensation.

2. Members of rural boards of education attending regular meetings of such board of education, if such meetings are held on and after August 28, 1919, (H. B. 43, 108 O. L.) are entitled to two dollars compensation for such attendance where the school district contains sixteen square miles or more, and members of boards of education in rural school districts containing less than sixteen square miles are entitled to receive one dollar compensation for each meeting attended; but no member of any rural board of education shall be paid for more than ten meetings during the year 1919 and only regular meetings of the board of education can be paid for.

The Restraint Against Payment of Public Funds to Sectarian Institutions as Embodied in the Last Provision of Section 3138-1 General Code, as Recently Amended, is to be Regarded as Applicable to Such Institutions as are Devoted to the Teaching Advancement or Inculcation of the Principles or Tenets of a Sect and Such Hospitals as Admit and Treat all Patients Without Regard to Sect or Religion and do not Engage in the Teaching or Promulgation of the Tenets of Any Sect or Religion or Other Denominations are not Within the Spirit and Purpose of the Restraint Against the Contribution of Public Moneys as Provided in Said Act.

No. 711—(Opinion Dated October 18, 1919.)

Hon. Samuel Doerfler, Prosecuting Attorney, Cleveland, Ohio.

Dear Sir: Acknowledgment is made of your communication requesting a construction of the provisions of House Bill No. 65, in relation to providing public funds by county commissioners for the purpose of aiding in the maintenance of hospital facilities and providing care and treatment for the indigent sick and disabled under agreement with corporations or associations organized for charitable purposes or for the purpose of maintaining and operating hospitals.

With your communication you enclose a letter received from your board of county commissioners requesting advise in the matter, and setting forth an enumeration of hospitals located in Cuyahoga county, which, it is indicated, are to be considered in connection with the administration of the provisions of said act.

It is also stated, both in your communication, and in the enumeration of hospitals by the commissioners that each and all of said hospitals, in accordance with their charters and by-laws "provide for the relief of the sick of all denominations and sects" without regard to religion, race or sect.

House Bill No. 65 is as follows:

"Section 1. That section 3138-1 of the General Code be amended to read as follows:

Sec. 3138-1. That the board of county commissioners of any county may enter an agreement with one or more corporations or associations, organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care

of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners, shall provide for the payment of the amount agreed upon, either in one payment, or installments, or so much from year to year as the parties stipulate. Nothing herein shall authorize the payment of public funds to a sectarian institution.

Section 2. That said original section 3138-1 and section 2502 of the General Code be, and the same are hereby repealed."

Section 3138 G. C. as enacted in House Bill No. 65 embodies practically all of the operative provisions of original section 3138-1 G. C. and 2502 G. C. which sections were repealed by the act.

The provision "nothing herein shall authorize the payment of public funds to a sectarian institution" appeared in identically the same language in section 2502 G. C., but I do not find that this provision of the statute has been the subject of judicial construction.

The granting or enabling provisions of the section in its amended form are very broad and purport to authorize the county commissioners to enter into an agreement for making contribution of funds for the care of the indigent sick and disabled, with corporations or associations organized for charitable purposes, or such as maintain or operate hospitals within the county, and in view of the large number, and in fact, the probable preponderance of hospitals conducted under the auspices of various religious and charitable institutions, it is hardly to be assumed in the first instance that all such were intended to be excluded from the application of the provisions of the statute in question, without regard to the actual terms and conditions of their admission and treatment of patients.

While in its broader signification, the term "sectarian" or "sectarianism" imports any partisanship or school of thought, whether political, philosophical, religious or otherwise, and in this broad application would comprehend adherence to a separate religious denomination, yet such terms are also defined in Webster's Dictionary, Standard Dictionary and March's Thesaurus in a more limited and special signification, importing a person or institution "that inculcates the particular tenets of a sect; devotion to the interests of a sect or party; undue denominationalism; excessive devotion to the advancement of a particular sect."

Having in mind the apparent intent of and purpose to be accomplished by the law, I am of the opinion that the restraint against payment of public funds to sectarian institutions as embodied in the last provision of the section is to be regarded as applicable to such institutions as are devoted to the teaching, advancement or inculcation of the principles or tenets of a sect; and that such hospitals as admit and treat all patients without regard to sect or religion, and do not engage in the teaching or promulgation of the tenets of any sect or religion or other denomination, are not within the spirit and purpose of the restraint against the contribution of public moneys as provided in the act.

In other words, the test of a public use as distinguished from a sectarian use, is a common or equal right free from discrimination or unreasonable restriction, and when the hospital is maintained and devoted to such public use, so that charity patients are admitted on equal terms without regard to religion or sect, and does not embody in its administration the teaching or inculcation of sectarian principles or doctrine, it is not considered to be disqualified under the provisions of the act to enter into the agreement with the commissioners for receiving public funds in the operation of its hospital and the treatment of the indigent sick and disabled.

It is believed that this general outline of the construction and application of the provision of the section to which your inquiry is directed will be found sufficient in determining the qualification of such hospitals as may enter into the consideration of the commissioners in accordance with the surrounding facts and character of each particular hospital.

SUPREME COURT

SYLLABI

16354—On the relation of Mike Gavalek vs. Industrial Commission. In mandamus.

NICHOLS, C. J.

G., an employe of an employer contributing to the workmen's compensation fund, being denied "any compensation at all" by the Industrial Commission of Ohio, obtained judgment in a "lump sum" on appeal duly prosecuted. No error proceeding was prosecuted by the Commission.

Held: Such judgment although erroneous is not void, and cannot be collaterally attacked by the Commission. The lump sum judgment so rendered must remain as the final determination of the rights of the parties and is not subject to the provisions of Section 1465-86, General Code. Writ allowed.

Jones, Matthias, Johnson, Wanamaker and Robinson, JJ., concur. Merrell, Jr., not participating.

16370—The Royal Indemnity Company of New York vs. The Northern Ohio Granite and Stone Company. Error to the Court of Appeals of Cuyahoga County.

JONES, J.

1. The rule of strict construction ordinarily applied in favor of private, voluntary sureties, does not apply to that class of sureties which, for a pecuniary consideration, undertakes to indemnify an owner of a construction against the defaults of the principal contractor who engages to furnish labor and materials for the construction. In such contracts, where ambiguous terms are employed, that construction should be adopted, if consistent with the purpose to be accomplished, most favorable to the beneficiary.

2. A surety of the character described, which by its contract, assures the faithful performance thereof by a principal who agrees to furnish labor and materials on a struc-

ture, at his own risk, cost and expense, is liable to a material man who furnishes material in default of the principal's payment thereof. (Roofing Co. vs. Gasnard et al., 89 Ohio St., 189, overruled.)

Judgment affirmed.

Nichols, C. J., Matthias, Johnson and Wanamaker, JJ., concur. Merrell, J., not participating.

16384—The Village of Northfield et al. vs. Public Utilities Commission of Ohio. Error to the Public Utilities Commission of Ohio.

JONES, J.

1. The act of March 21, 1917 (107 O. L., 525), authorizes abandonment of a part of an interurban line where the Public Utilities Commission is satisfied that such would be reasonable, having due regard to the welfare of the public and the cost of operating the service or facility.

2. The fact that a railroad has discontinued service over a part of its main track for a short period immediately prior to its application to abandon will not deprive it of that right, provided such track has been operated for five years previous to such application.

3. Because of the continued use of service and the subjection of such service to the authority of the Public Utilities Commission under the facts disclosed in this case, there was no voluntary abandonment of the old route in controversy.

Order affirmed.

Nichols, C. J., Matthias, Johnson, Wanamaker and Robinson, JJ., concur. (Merrell, J., not participating.)

16301—The City of Elyria vs. Roy F. Vandemark. Error to the Court of Appeals of Lorain County.

MATTHIAS, J.

1. When a public office is abolished by duly constituted authority, the incumbent thereof ceases to be an of-

ficer, for he cannot be a *de facto* officer of an office no longer in existence.

2. The constitution of the state having classified municipalities on a basis of population, the legislature is without authority to make further classification thereof for the purpose of legislation affecting municipal government.

3. The provisions of Section 4250, General Code, as amended 106 O. L. 483, purporting to authorize the council in cities having a population of less than twenty thousand to merge the office of director of public safety with that of the director of public service, are in conflict with the provisions of Section 1, Article XVIII of the Constitution of Ohio.

Judgment affirmed.

Nichols, C. J., Jones, Johnson, Wanamaker and Robinson, JJ., concur. Merrell, J., not participating.

SYLLABUS

16200—The Adams Express Company vs. Ida Beckwith, The Hocking Valley Railway Company and the Lake Shore & Michigan Southern Railway Company. Error to the Court of Appeals of Lucas County.
WANAMAKER, J.

1. Written release in general and unqualified terms, made and executed upon legal consideration between a party wronged and one or more of the persons charged with the commission of the wrong, is presumed in law to be a release for the benefit of all the wrongdoers.

2. Such written releases, however, are to be construed according to the well-known rules governing the construction of contracts.

3. Where such written releases expressly provide that the release is solely and exclusively for the benefit of the parties thereto, and expressly reserves a right of action as against any other wrongdoer, such reservation is legal and available to the parties thereof.

4. Such written release, whether it be a covenant not to sue, a covenant to cease suing, or a covenant in partial satisfaction, does not inure to the benefit of any other person, than those who are parties to such written release, save and except that it is a satisfaction *pro tanto* to the party wronged and to that extent works a discharge to all joint wrongdoers. (Ellis vs. Bitzer, 2 Ohio, 89, disapproved and overruled.)

Judgment affirmed.

Nichols, C. J., Jones Matthias, Johnson and Robinson, JJ., concur. Merrell, J., not participating.

SECRETARY OF STATE

NEW CORPORATIONS.

Boulevard Garage & Service Co., Cincinnati, \$10,000. Wm. Flister, Geo. E. Momberg, Charles Mowelein, John C. Flister, Harry V. Metzel.

Webster Pharmacies Co., Cleveland, \$25,000. Lloyd E. Webster, Edgar R. Bayes, Walter C. Palenschat, Ralph Braun, E. M. Kossin.

Fayette Sand and Gravel Co., Washington C. H., \$25,000. G. D. Baker, George A. Hyer, N. C. Hosier, T. W. Jacobs.

Co-operative Audit and Tax Co., Dayton, \$75,999.99. R. C. Corwin, I. E. Tyler, E. C. Porterfield, R. K. Landis, S. S. Markham.

Marion Foundry Co., Marion, \$10,000. Wm. Ring, Earl C. Harriman, C. A. Bolin, Wm. O. Haherman, W. E. Klinefelter.

Merit Machine Co., Cleveland, \$200,000. Isador Grossman, N. M. Doehring, H. B. Howells, C. A. Riemen-schneider, M. Sharpe.

Falk-Felerstein Co., Cleveland, \$100,000. Max P. Goodman, N. C. Fleishman, M. Falk, George Janowitz, Herman Felerstein.

Brevcoort Sales Co., Cleveland, \$10,000. E. N. Mathews, E. H. McQuat, J. H. Murphy, A. B. Williams, H. S. Tennant.

Krenz Boiler Works, Toledo, \$30,000. Reinhold W. Konz, M. K. Kureth, N. M. Burgermeister, John W. Hackett, John T. Lynch.

White Auto Co., Hamilton, \$15,000. Elmer W. White, Earl S. Gahagen, Clarence M. Smith, Joseph A. Gutting, D. M. Bernard.

Glencoe Coal Co., Bellaire, \$40,000. Charles N. Cole, John Hebllick, Chas. S. Perunke, Anton Regezinski, John Albert.

John Dieterich Co., Cleveland, \$10,000. John A. Dieterich, Myron Nesck, Benj. Dieterich, Ida Dieterich, Victor Dieterich.

Midway Co-operative Association, Midway, \$10,000. Joseph Wild, Joseph Svacil, Henry Pech, John Troanovich, Frank Dodna, Vacklav Bouske.

Mohler Garage Co., Fremont, \$25,000. Charles Mohler, Bert C. Nahm, Anna Nahm, E. P. Strausbaugh.

The Southern Wrecking & Salvage Co., Cincinnati, \$10,000. Henry M. Beebe, E. J. Murphy, John D. Powell, B. F. Morrison, Edw. Reckel.

Ohio Sashweight Co., Newark, \$15,000. M. J. MacDonald, N. E. Hones, J. H. Tavenner, C. W. Cunningham, Ed. Warfield.

Bell Auto Sales Co., Nelsonville, \$1,000. H. E. Bell, A. C. Stratton, C. A. Stover, L. C. Spring.

Elmwood Realty Co., Wooster, \$25,000. Otis Smith, R. R. Frazee, T. L. Flattery, Walter W. Smith, T. S. Rice.

Coventry Realty Co., Cleveland, \$10,000. E. E. McCloud, Sam B. Fitzsimmons, John A. Nash, M. Grady, H. C. Berghaus.

Song Shop, Columbus, \$20,000. Charles Roy Cox, F. G. Cox, R. J. Has-kin, D. G. Mathena, Philip M. Foote.

Staley Service Delivery Co., Colum-bus, \$15,000. Cornelius D. Staley, Homer S. Gabel, Thyra L. Staley, Roy F. Fisher, Walter E. Poston.

J. C. Comerford Plumbing Co., Cleve-land, \$10,000. J. J. Comerford, Mary Comerford, Margaret C. McCarthy, G. B. Woolmington, A. J. Goetzfried.

DeWeese Co., Sidney, \$100,000. N. C. DeWeese, C. B. DeWeese, W. M. Wilkinson, Joe D. Cook, W. R. Ander-son.

B. H. P. Co., Ellet, \$10,000. A. M. Bixler, F. J. Haynes, John Pontius, Ja-cob Hurr, W. I. Withrow.

Dayton Tractor Co., Dayton, \$250,000. E. A. Brenneman, Harry Gas-cho, J. R. Allen, A. M. Inderbitzen, Isaac Warner.

Nippe Brush Co., Toledo, \$50,000. Oswald Nippe, Gustav Lay, Arthur E. Klauser, Charles W. Klauser, Hugh R. Hauck.

Auto Tire Protector Co., Elyria, \$25,000. A. J. Roberts, Anna Ehle, Adolph H. Riebesel, Earl H. Bennett, Kath-ryn M. Mussey.

Zeigler-Schaefer Co., Cincinnati, \$50,000. M. L. Zeigler, Rudolph Schaefer, Bernhard Schaefer, Sr., Bernhard R. Schaefer, Jr., Ella Zeigler.

Medina Predmore-Henry Co., Medi-na, \$30,000. J. W. Predmore, W. R. Irvin, John Hayden, Robert Henry, Charles A. Moog.

Motor Delivery Co., Canton, \$20,000.
Wendell Herbruck, G. B. Kellogg, H. Nelius, E. Nordstrom, W. Frey.

Allen-Osborn Co., Cleveland, \$10,000. V. B. Allen, I. S. Osborn, V. B. Kofoed, C. F. Lunte, George F. Wolters.

Wight-O'Rourke Co., Cleveland, \$10,000. Elmer B. Wight, Edw. C. O'Rourke, Alice E. Wight, Margaret R. Wight, E. L. Gatendorf.

Cambridge Steel Co., Cambridge, \$500,000. T. W. Scott, Frank H. Johnson, C. D. Thompson, W. N. Bomberger, Thomas A. Davis.

Cleveland-Massillon Coal Co., Cleveland, \$51,500. Isaac F. Orr, W. R. Sheppard, R. B. Graham, H. Anderson, Robb D. Bartholomew.

H. B. Bruck & Sons Co., Cleveland, \$75,000. H. B. Bruck, A. B. Bruck, Sam Bruck, L. H. Miller, Aladar N. Weiss.

Haas Electric Sales Co., Cleveland, \$20,000. L. D. Goldhamer, Max L. Haas, A. E. Goldhamer, H. Klein, M. Walters.

Progressive Manufacturing Co., Cleveland, \$5,000. John J. Mahon, James Mahon, James L. Mahon, Andrew Royle, C. E. Mahon.

Schwartz Realty Co., Cleveland, \$10,000. Herman Schwartz, A. Baranson, P. Kuederle, J. C. Frederick, S. I. Powell.

Best Lunch Co., Cleveland, \$1,000. A. H. Goldman, S. A. Thorman, A. Krejci, A. L. Dietz, Charles A. Lafkowitz.

Hudson Oil and Gas Co., Nelsonville, \$10,000. M. M. Kasler, James Hamer, C. E. Campbell, Frederica Kasler, Earl N. Campbell.

E. K. S. Realty Co. Toledo, \$25,000. George W. Ritter, Lee H. Schminck, M. M. McGowan, V. Barnes, E. E. Lay.

Sleepy Hollow Country Club, Brecksville Township, Cuyahoga County, \$1,000. B. E. Williams, C. J. Kavanaugh, H. C. Fulton, Don B. Alexander, L. B. Davenport.

Cleveland Daily Colored American Publishing Co., Cleveland, \$10,000. Rene Merle Williams, Prof. Stracona Williams, J. D. Spears, Harry Thurman, W. M. Smith.

Knights of the Golden Eagle Home Association Co., Lima, \$25,000. A. J. Wheelberger, Charles Steele, Lester E. Crider, Frank Olney, J. L. Stants, J. J. Burtchin, C. E. Bales, W. G. Thompson, A. M. Houck, D. L. Crider.

Clark-Abbey Co., Cleveland, \$1,000. H. P. Abbey, C. I. Parlett, G. J. Forman, T. M. Lavello, J. B. Clark.

American Display Co., Dayton, \$10,000. Milton S. Dunkelberger, Frank D. MacDonald, Byron C. Dunkelberger, William L. Stein.

Toledo Enameled Wire Products Co., Toledo, \$300,000. Seymour Hirsch, George H. Beckwith, Alex. L. Smith, L. Van Luven, L. R. Wickenden.

Scott Equity Exchange Co., Scott, \$30,000. C. L. Gordon, S. C. Vincent, S. N. Mohr, Ray V. Rogers, Edward Mohr.

Ohio Metal Utensil Co., Cleveland, \$10,000. Jacob Hartman, E. J. Thobaben, A. L. Lang, Harry H. Hose, Sol. Hurvitz.

United Rubber Products Co., Ashland, \$3,000. R. O. Baker, F. W. Dewey, R. E. Jordan, Charles Jones, E. Z. Zent.

Ohio Bake-Rite Bakeries Columbus, \$150,000. A. E. Hildreth, Albert S. Barnes, Emma J. Field, R. Grace Field, Frank B. R. Van Syckle.

Nu-Air Tire & Rubber Co., Cleveland, \$25,000. T. C. Banville, George H. Knapp, Joseph P. Murray, Joseph F. Hodinks, J. J. Murray.

Adams Baking Co., Portsmouth, \$10,000. Allen W. Adams, George H. Adams, William H. Adams, Arthur Adams, Clara A. Adams.

Ohio Theatre Co., Cleveland, \$1,000. George L. Keeley, P. M. Gerlach, A. J. Roth, M. Bornstein, E. P. Strong.

Blue Acme Transportation Co., Cleveland, \$1,000. George G. Keelay, M. A. McCormick, C. A. Byrne, M. Bernhardt, A. M. Kelley.

John Fieg Co., Cleveland, \$10,000. Lucius R. Landfear, W. P. Schreiner, Elmer Schreiner, John Fieg, Lina Schmuck.

Marie Wall Paper Cleaning Machine Co., Cleveland, \$300,000. George J. Forcier, Melvin H. Lee, W. P. Zieger, R. D. Owen, J. W. DeCumbe.

Cleveland Boot Shop, Cleveland, \$20,000. A. W. Laetsch, C. C. Graber, E. J. Duerr, D. S. Barrett, Jr., T. W. Boutall.

Academy Journal Publishing Co., Cincinnati, \$10,000. Charles L. Bonfield, Robert Carothers, W. B. Haines, Otto J. Seibert, Charles T. Souther.

Kulla Machine Co., Cleveland, \$150,000. J. William DeCumbe, Michael J. Kulla, Martin A. Tomusko, R. D. Swan, J. E. Hawkins.

Standard White Metals Co., Elyria, \$90,000. J. William DeCumbe, Michael J. Kulla, Martin A. Tomusko, R. D. Swan, J. M. Hawkins.

Standard White Metals Co., Elyria, \$90,000. George Stevens, John K. Nece, Frank J. Styens, W. H. Stark, S. M. Squire.

Jones-Miller Oil Co., Toledo, \$1,000. Oscar J. Smith, C. W. F. Kirkley, Bernice Swisher, Marjorie Dean, C. S. Northup.

Superb Motor Vehicle Co., Akron, \$12,500. Bernard J. Amer, Harry L. Snyder, Herman E. Werner, N. E. Roby, Fred B. Hall.

North Carolina Farms Co., Columbus, \$1,000. M. Garner, R. K. Hauck, I. R. Howarth, R. B. Langel, S. W. Wallar.

Exchange Land Co., Cleveland, \$1,000. Q. H. Findley, C. A. Alexander, T. M. Dye, K. T. Siddall, Paul Keough.

Bolivar Garage & Storage Co., Cleveland, \$150,000. Roscoe M. Ewing, Jas. L. Lind, E. L. Heasley, Fred L. Benage, Ernest Ewing.

Standard Silicate Co., Cincinnati, \$500,000. Frank VanSlyck, Charles M. Bels, Joseph Wilby, James G. Stewart, Nathan Vigran.

Mammouth Oil Co., Cincinnati, \$100,000. Nicholas Jacobson, Meyer Cohen, William Brown, William Jacobson, Henry Pounds Karch.

Fred F. Field Commissary Co., Cleveland, \$2500. Fred Field, Joseph Kelly, Joseph V. Gibbons, Regina M. Keppler, Frank Meyers.

General Supply Co., Cleveland, \$250,000. E. F. Buescher, C. F. Buescher, George H. Miller, F. W. Buescher, P. H. McAuliffe.

Honk-Honk Publishing Co., Cincinnati, \$1,000. C. L. Bonifield, Frank H. Miller, William Perin, Frank Switalski, William T. Calerd'ne.

Huron-Canfield Co., Cleveland, \$150,000. George R. Canfield, H. M. Carruth, Louis Carruth, Charles McLean, Mrs. H. M. Tucker.

Anthony Bros. Co., Dayton, \$100,000. E. D. Anthony, J. H. Dillard, W. W. Buran, W. J. Weller, George W. Balch.

John G. Heiser Co., Lakewood, \$10,000. John G. Heiser, Lauretta C. Heiser, Joseph C. Huber, John L. Moats, Fred J. Schrenk.

Nutter Aero Transport Co., Portsmouth, \$15,000. Robert V. Nutter, Robert M. Nutter, Cary M. Williams, B. Leroy Compton, Howard Shoemaker.

Euclid 65th Street Building Co., Cleveland, \$10,000. Howard L. Barkdull, Charles C. Owens, N. M. Odenkirk, Clan Crawford, John A. Smith.

Wilcox Rubber Co., Lorain, \$50,000. H. E. Wilcox, H. E. Bracken, William Cottingham, C. C. Coleman, George Canalos.

Preston Realty Co., Cleveland, \$30,000. J. C. Reyant, J. A. Friend, F. M. Wheelidin, Elmer W. Waite, C. Kovanda.

M. Kaber & Son Co., Cleveland, \$25,000. Moses Kaber, Joseph W. Kaber, Monroe Pollock, Fannie Kaber, Mary M. Kaber.

National Grocery Co., Cleveland, \$500,000. Gilbert L. Kirtz, Henry D. Hawkins, Gray B. Krumcke, Charles B. Stauffer, Michael Flutko, Jr.

Community Club Co., Delphos, \$3,000. P. C. Bergner, T. F. Snyder, Alex. J. Shenk, Joseph Jettinghoff, A. J. Laudick.

W. J. Pattee Community Co., Cincinnati, \$25,000. W. J. Pattee, R. L. Ruth, J. M. Leedy, A. J. Kiday, Eula D. Pattee.

American Laboratories Co., Cincinnati, \$8,000. John D. Ellis, Walter C. Taylor, A. Wood, R. C. Cronin, E. A. Fulner.

Kenmore Pythian Temple Co., Kenmore, \$10,000. George Haneline, J. B. Grimes, W. H. Blinn, C. E. Benedict, J. E. Bittikoffer.

Newton Falls Savings & Loan Association, Newton Falls, \$100,000. Carl W. Smith, A. W. Hart, A. E. Butte, O. R. Jones, W. W. Klingeman, A. Weiss, S. A. Klingensmith, W. C. Bate, Henry Herbert, E. R. Smith, George T. Fillius.

Dayton Automobile Necessity Co., Dayton, \$250,000. H. P. Sollenberger, R. E. Sollenberger, Corven Sollenberger, C. F. Mitchell, R. Fred Fackler, Wm. M. Kneer, Jos. Kramer, Katherine A. Rowland, E. L. Powers, M. L. Barringer, E. M. Powers.

Shook Laundry & Dry Cleaning Co., Lima, \$80,000. Nelson Shook, Mary B. Shook, Della Osmon, Thomas H. Ritenour, Rolland P. Shook.

Whetstone Oil & Gas Co., Marion, \$40,000. Daniel Murphy, F. R. Geer, Frank V. Murphy, Harry E. Hessberger, Henry Schoenlaub.

Highland Upholstering Co., Cleveland, \$10,000. William C. Keough, M. M. Boche, Frank G. Mooney, B. Brabeck, L. Lepple.

W. J. Brown Co., Columbus, \$50,000.
Robert W. Smith, George A. Wood,
Ernest O. Lemnitzer, C. B. Seitsam,
Pauline Cozad.

Queen Optometrical Co., Toledo,
\$15,000. Samuel Gordon, David N.
Berris, Jeanette Berris, Joseph R.
Allan, Marshall A. James.

Community Amusement Co., Tole-
do, \$200,000. Charles G. McKinley,
Frank J. Kessel, Abraham Horwitz,
Charles R. Barefoot, Edwin S. Barger.

Tenbusch-Parker Construction Co.,
Cleveland, \$50,000. S. Q. Kerruish, G.
E. Hartshorn, George W. Spooner, Ray
T. Miller, M. B. Lavine.

Lutz Auto & Supply Co., Mansfield,
\$35,000. Thomas J. Lutz, Frank J.
Hughes, Charles S. Wilson, Henry E.
Endly, John Banks.

Rath Realty Co., Cleveland, \$25,000.
M. J. Monahan, John A. Rath, B. W.
Jacobi, Benjamin F. Fiery, Thomas
L. Sidlo.

Northern Building Co., Cleveland,
\$2,500. E. C. Wolfe A. J. Pejsa, L.
M. Sewell, E. W. McGraw, Harry L.
Deibel.

Smith Book Co., Cincinnati, \$10,000.
William C. Smith, Elizabeth Wilson,
J. I. Parker, A. M. Braddy, A. E. Goet-
ting.

Moore Tool and Machine Co., New-
ark, \$250,000. Otto N. Moore, E. D.
Leach, W. W. Davis, J. A. Chilcote, E.
M. Baugher.

York Ohio Ice Machine Co., Clevel-
and, \$50,000. John Schurman, Wil-
liam T. O'Brien, Frederick P. Walther,
Marguerite E. Temple, Charles A.
Hyde.

Sanders-McIntire Co., Springfield,
\$25,000. Ernest V. Sanders, Charles
A. Roach, David A. McIntire, Otto An-
derson, Clarence E. Grimes.

Cincinnati Automatic Sales Co., Cin-
cinnati, \$300,000. David Osborne,
Frank C. Dunbar, W. H. Miller, M. G.
Burns, Frank Quigley.

Weiss-Schwartz-Keller Co., Clevel-
and, \$40,000. Sidney M. Keller, Meyer
Schwartz, A. Weiss, Sol W. Wyman,
Samuel B. Tilles.

Increases

Ironton Electric Co., Ironton, \$150,-
000 to \$500,000.

Gyrne Mfg. Co., Cleveland, \$10,000
to \$25,000.

Ohio Nut & Washer Co., Mingo
Junction, \$25,000 to \$50,000.

Farmers' Commercial Grain & Seed
Co., Rising Sun, \$15,000 to \$50,000.

H. Leet Lumber Co., Portsmouth,
\$170,000 to \$330,000.

Canton Cabinet and Construction
Co., Canton, \$50,000 to \$150,000.

Fostoria Pressed Steel Co., Fostoria,
\$100,000 to \$300,000.

Pollack-Selman Co., Cleveland, \$50,-
000 to \$100,000.

McCain Realty Co., Dayton, \$50,000.
to \$60,000.

Cranmer-Perrine Co., Akron, \$60,000
to \$150,000.

Commercial Bank & Savings Co.,
Fostoria, \$50,000 to \$100,000.

L. & M. Auto Co., Cleveland, \$10,000
to \$25,000.

New Era Grain Co., Bowersville,
\$15,000 to \$30,000.

Church Oil & Gas Co., Rushville,
\$15,000 to \$30,000.

Union Drug Co., Canton, \$100,000 to
\$300,000.

Arcanum Building & Loan Associa-
tion, Arcanum, \$200,000 to \$300,000.

Elias Margolis Co., Dayton, \$10,000
to \$75,000.

Buckeye Building & Loan Co., Se-
bring, \$300,000 to \$600,000.

Harris-Brazee Mfg. Co., Cleveland,
\$10,000 to \$50,000

Concrete Steel Construction Co.,
Springfield, \$5,000 to \$25,000.

Milner Electric Co., Cincinnati, \$40,-
000 to \$80,000.

Loudonville Mill and Grain Co.,
Loudonville, \$100,000 to \$150,000

Chatham Oil Co., Cleveland, \$40,000
to \$150,000.

Enamel Products Co., Cleveland,
\$125,000 to \$225,000.

D. J. Peterson Lumber Co., Toledo,
\$100,000 to \$225,000.

Clark Restaurant Co., Cleveland,
\$10,000 to \$40,000.

Cranmer-Perrine Co., Akron, \$60,000
to \$150,000.

Direct Sales Co., Gallion, \$10,000 to
\$25,000.

Coal Ridge Oil & Gas Co., Cam-
bridge, \$10,000 to \$25,000.

E. L. Southern Co., Cleveland, \$25,-
000 to \$75,000.

H. K. Ferguson Co., Cleveland,
\$100,000 to \$150,000.

Decreases

Dayton Journal Co., Dayton, \$300,-
000 to \$600

Herald Publishing Co., Dayton, \$60,-
000 to \$600.

Chatham Oil Co., Cleveland, \$50,000
to \$40,000.

PUBLIC UTILITIES COMMISSION

No. 1815—In the Matter of the Application of Mahoning and Shenango Railway & Light Company for Consent and Authority to Guarantee the Payment of \$1,444,000.00 of Three-Year, Seven Per cent. Notes of Republic Railway & Light Company. Prayer Granted.

(Dated December 2, 1919.)

The commission having heretofore, by order made and entered as of date, January 23d, 1918, in proceeding No. 1377, found that, insofar as it had the authority so to do, it should, and therein and thereupon did, consent to and authorize the Mahoning and Shenango Railway & Light Company to guarantee, by proper endorsement, the payment of the principal and interest of \$2,000,000.00, principal sum, of two-years, six per cent. notes, to be issued by the Republic Railway & Light Company, (the owner of substantially all of the outstanding capital stock of the said Mahoning and Shenango Railway & Light Company—including \$2,000,000.00, par value of said company's seven per cent. preferred capital stock, the issue of which was duly authorized by the order of this commission, made and entered as of date, January 7th, 1918, in proceeding No. 1306, and the purchase of which by the said Republic Railway & Light Company, the only purchaser which could be found therefor, could be financed by said last named company only by the issue of the aforesaid notes, guaranteed and secured as hereinbefore and hereinafter stated), and the payment of which was to be primarily secured by the pledge, as collateral security, of the aforesaid \$2,000,000.00, par value, of the preferred capital stock of the said Mahoning and Shenango Railway & Light Company.

Comes now the said Mahoning and Shenango Railway & Light Company, and by its application herein and the evidence submitted upon the hearing thereupon, represents and shows to the satisfaction of the commission,

(1) That, of the \$2,000,000.00, principal sum, of notes of the Republic Railway & Light Company which it was authorized to guarantee, \$1,500,000.00, principal sum, only were issued and disposed of, and, of the said notes so issued, \$56,000.00, principal sum, have been retired through conversion of the same into preferred stock, leaving \$1,444,000.00, principal sum, of said notes now outstanding;

(2) That the said \$1,444,000.00, principal notes, so outstanding will become due and payable on the 15th day of January, 1920, unless sooner called for redemption, and must, on said day be paid and discharged or lawfully refunded;

(3) That, by reason of the condition of the securities market and the general financial conditions of the country prevailing ever since said notes were issued, guaranteed and sold, it has been and is now impossible to sell and dispose of the preferred stock of the applicant, and that it will be necessary for the said Republic Railway & Light Company to issue its new notes and to sell the same in order to procure funds with which to pay or redeem said \$1,444,000.00, principal sum, of notes now outstanding and

(4) That, to enable the said Republic Railway & Light Company to sell such new notes, it will be necessary that the same be guaranteed by the applicant (Mahoning and Shenango Railway & Light Company) and in addition thereto, to pledge, as collateral security for the payment of the principal and interest thereof, certain of the common capital stock of the applicant, now owned by the said Republic Railway & Light Company, together with such amount of the aforesaid preferred capital stock of the applicant as shall equal, in par value, the principal amount of the notes to be issued,

wherefore this commission in so far as it has jurisdiction of the premises, finds that the creation of said indebtedness, by the assumption of such contingent liability, is reasonably required and necessary to secure moneys with which to pay and discharge, or refund, the lawful indebtedness, or obligations, of the said Mahoning and Shenango Railway & Light Company. It is, therefore,

Ordered, That, in so far as this commission has the authority so to do, the said Mahoning and Shenango Railway & Light Company be, and hereby it is authorized to guarantee, by proper endorsement, the payment of the principal and interest of one million, four hundred and forty-four thousand dollars (\$1,444,000.00), principal sum, of three-year, seven per cent notes, to be issued and sold, for the highest price obtainable but not less than ninety-two percentum of the par value thereof, by the Republic Railway & Light Company, the payment of which is to be primarily secured by the pledge, as collateral security, of \$1,444,000.00, par value, of the seven per cent cumulative preferred capital stock of said Mahoning and Shenango Railway & Light Company, issued by that company under the authority of the order in said proceeding No. 1306 aforesaid, and purchased by the said Republic Railway & Light Company, and the proceeds of which said notes are to be used to discharge the notes of the said Republic Railway & Light Company, guaranteed by the

said Mahoning & Shenango Railway and Light Company, which mature and become due and payable upon the 15th day of January, 1920. It is further

Ordered, That, in the event that said guarantor is required to pay said notes, or any part thereof, it shall do so only upon the surrender to said guarantor, by the holder of said notes and said preferred capital stock as collateral security therefor, of an amount of said preferred capital stock equal, in par value, to the amount of the principal of said notes which said guarantor shall be required to pay by reason of said guaranty. It is further

Ordered, That all such preferred capital stock as is so reacquired by said guarantor by reason of its obligation for the payment of said notes, shall be held in the treasury of said guarantor and shall, in no event, be reissued, either by original certificate, substitute certificate or otherwise, except upon the further order of this commission. It is further

Ordered, That applicant make verified reports to this commission of the exercise of the authority herein granted and, upon the maturity of said notes, its actions, if any, in respect to a discharge of its contingent liability thereon.

No.—845—In the Matter of the Joint Application of The Central District Telephone Company, The Washington Telephone Company, The Jefferson Telephone Company, The Belmont Telephone Company, The Union Telephone Company and The Woodfield Telephone Company for the Consent and Approval of the Commission to the Sale of the Property of The Washington Telephone Company, The Jefferson Telephone Company, The Belmont Telephone Company, The Union Telephone Company and The Woodfield Telephone Company to The Central District Telephone Company.—Modification of Order.

(Dated November 20, 1919.)

This day, after full hearing, this matter came on for further consideration upon the application of The Chesapeake and Potomac Telephone Company of West Virginia, (successor in title on April 1, 1918, to the property in the State of Ohio, theretofore of The Central District Telephone Company,) asking such modification and amendment of the order, made and entered herein as of date August twenty-eighth, 1918, as will permit and authorize it.

(1) To establish, effective December 1st, 1919, certain proposed increased exchange rental charges for the furnishing of local exchange service in the cities and towns of Barnes-

ville, Bellaire, Bethesda, Bridgeport, Marietta, Martins Ferry, Mingo Junction, New Metamoras, Newport, St. Clairsville, Shadyside, Steubenville and Woodsfield, Ohio, in lieu of the rates and charges for such service fixed and prescribed by said order of August 28th, 1916; which rental charges were, effective June 16, 1919, superseded by schedule of rental charges (now in effect) and which were instituted under authority of the Postmaster General during the period of governmental control of applicant's property.

(2) To establish, effective December 1st, 1919, for said cities and towns, new and greatly contracted free service areas in lieu of the free service areas fixed and prescribed by said order of August 28th, 1916; but now and since June 16, 1919, also modified under such governmental authority.

(3) To establish, effective December 1st, 1919, for said cities and towns, certain increased rates and charges for exchange mileage and foreign exchange line mileage, and extension, tie, private and leased lines, in lieu of the rates and charges for such services fixed and prescribed by said order of August 28th, 1916, and still in effect, and

(4) To establish, effective December 1st, 1919, and in addition to the rates, charges, rentals and tolls for the furnishings of its service, heretofore fixed and prescribed by this commission, the charges instituted under the direction of the postmaster general during the period of governmental control and operation of applicant's system, popularly denominated as "Service Connection Charges."

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the commission finds, (1)—That the rental charges now maintained by The Chesapeake and Potomac Telephone Company of West Virginia, for local exchange service set forth and published in the following schedules now on file with this commission viz:

Service at	Schedule
Barnesville.....	Second Revised Sheet 1, P. U. C. O. No. 2
Bellairs.....	Second Revised Sheet 1, P. U. C. O. No. 3
Bethesda.....	First Revised Sheet 1, P. U. C. O. No. 3-A
Bridgeport.....	Second Revised Sheet 1, P. U. C. O. No. 4
Marietta.....	Third Revised Sheet 1, P. U. C. O. No. 16
Martins Ferry.....	Second Revised Sheet 1, P. U. C. O. No. 17
Mingo Junction.....	Fourth Revised Sheet 1, P. U. C. O. No. 18
New Metamoras	P. U. C. O. No. 20-B
Newport	Original Sheet 1, P. U. C. O. No. 21-A
Shadyside.....	Second Revised Sheet 1, P. U. C. O. No. 29
Steubenville.....	Fifth Revised Sheet 1, P. U. C. O. No. 32
Woodsfield.....	Second Revised Sheet 1, P. U. C. O. No. 37

are not now excessive or unreasonable and should not be disturbed until such time as definite results of applicant's operation thereunder may be ascertained; (2)—That the free service areas fixed and prescribed in said order of August twenty-eighth, 1916, were reasonable and necessary to meet the public convenience in furnishing a unified telephone service in said territory and should not now be changed or modified; (3)—That, with the restoration of its former free service area at St. Clairsville, the applicant should be permitted to restore the exchange rental charges for said exchange fixed and prescribed by said order of August twenty-eighth, 1916, and accorded an opportunity if it so desires to show the necessity, if any there be, for any change in such charges because of the restoration of said free service area; (4)—That this Commission, by order duly made and entered in proceeding No. 1728, has already determined the matter of charges, by the telephone companies operating in Ohio, for installations, transfers and moves and changes, and (5)—That the rates now maintained by the applicant for exchange mileage and foreign exchange line mileage, and extensions, tie, private and leased lines have not been shown to be inadequate or insufficient, and should not now be altered or changed. It is, therefore,

Ordered, That the order made and entered herein as of date August twenty-eighth, 1916, be, and hereby it is modified and amended in the following respect only: That said The Chesapeake and Potomac Telephone Company of West Virginia be, and hereby it is authorized to establish, effective December first, 1919, and to thereafter maintain and collect, until the further order of this Commission, the rental charges for the furnishing of local exchange service in the cities and towns of Barnesville, Bellaire, Bethesda, Bridgeport, Marietta, Martins Ferry, Mingo Junction, New Metamoras, Newport, Shadyside, Steubenville and Woodsfield, Ohio, set forth in the schedules hereinbefore enumerated, which exchange rental charges were herein not found to be now unjust or unreasonable. It is further

Ordered, That said the Chesapeake and Potomac Telephone Company be, and hereby it is notified, directed and required, within sixty days after June 30th, 1920, to file with this Commission a detailed report, under the oath of its Chief Accounting Officer, of its revenues and disbursements, by exchange and as a whole for the State of Ohio, for the year ended June thirtieth, 1920. It is further

Ordered, That in all other respects said application for the

modification and amendment of the order made and entered herein, as of date August twenty-eighth, 1916, (save and except as the same shall have been supplemented by the order, so made and entered in proceeding No. 1728 as aforesaid), be, and hereby it is denied. It is further

Ordered, That leave hereby be granted said The Chesapeake and Potomac Telephone Company to file further pleadings and submit further testimony relative to rental charges for the furnishing of local exchange service at St. Clairsville, Ohio, if it so desire. It is further

Ordered, That jurisdiction of this proceeding be specifically retained for the receipt and consideration of the reports hereinbefore required and the making of such further and other order herein as the facts thus disclosed may warrant or require.

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I. & S. Docket No. 42—In the Matter of the Application of The Plain Dealer Publishing Company, et al., for a Suspension of the Proposed Rate of One Cent Per Pound for Transporting Newspapers, Proposed to be Established by The Cleveland and Eastern Traction Company, Effective September 15, 1919.

I. & S. Docket No. 43—In the Matter of the Application of The Plain Dealer Publishing Company, et al., for a Suspension of the Proposed Rate of One Cent Per Pound for Transporting Newspapers, Proposed to be Established by The Cleveland and Chagrin Falls Railway Company, Effective September 15, 1919.

I. & S. Docket No. 40—In re: Electric Package Rates on The Cleveland, Painesville & Ashtabula R. R. Co., The Cleveland, Painesville & Eastern R. R. Co., The Cleveland, Southwestern & Columbus Ry. Co., The Lake Shore Electric Ry., The Northern Ohio Traction & Light Company and The Richland Public Service Company.

(Dated December 10, 1919.

Finding.

By the Commission.

These cases involve the question of rates to be charged for the transportation of newspapers out of Cleveland, Ohio, over the lines of the Interurban Railroads mentioned in the caption. A tariff was filed by the Electric Package Agency increasing the rates on the lines over which the agency operates, from one-half cent to three-quarters of a cent per pound. Tariffs were filed by the Cleveland &

Eastern Traction Company, and the Cleveland & Chagrin Falls Railway Company, increasing their rates from one-half to one cent per pound.

Protests were filed by the Plain Dealer Publishing Company, publishers of the Cleveland Plain Dealer; the Cleveland Company, publishers of the Daily News and Sunday Leader; and the Scripps Publishing Company, publishers of the Cleveland Press.

The tariff of the Electric Package Agency was not suspended by the Commission, but by agreement of counsel, the effective date of the proposed new rate has been postponed pending the decision of the Commission. The tariffs of the other two carriers were suspended by formal order of the Commission pending investigation.

The method of transporting and handling newspapers as disclosed by the testimony taken at the hearings in these cases, makes it difficult if not impossible to ascertain the actual cost of said services rendered by the electric railroads, but it is a matter of common knowledge, that the very article necessary to the maintaining and operating of said transportation companies, has mounted steadily since the beginning of the world war and has not decreased as yet, if at all, to any material extent. In view of the great burden imposed upon said roads from the abnormal conditions aforesaid, and the further fact that all the protestants have increased the price charged the public for their newspapers to the extent of 100% during this same period, in the opinion of this Commission it is only fair and equitable that they should bear their proportionate share of the burden so imposed upon the said electric companies by paying a slight increase for the transportation of their newspapers.

It is evident from the testimony that the services rendered by said electric railroads in transporting newspapers is, to say the least, fairly satisfactory, it being a quick and cheap method of giving to the reading public the daily newspapers at their homes and places of business in a short time after they leave the press, and for that reason, at least to some extent, said services so rendered may be deemed to be an extraordinary service, and the protestants failed to show to the satisfaction of the Commission that an increase of some kind is not justified.

The Commission is therefore of the opinion that a rate of three-fourths of a cent per pound will be a just and reasonable rate to be charged in the future for said services under all the circumstances and for the reason heretofore set forth, this being an increase of one fourth cent per pound over the present rate.

To facilitate matters of accounting on the part of both the carriers and protestants, the Commission believes that it would be proper to establish the new rates effective January 1st, 1920. The Electric Package Agency will therefore be permitted to reissue and file on less than statutory notice to become effective January 1st, 1920, a new tariff fixing a rate of three-quarters of a cent per pound. The Cleveland and Eastern Traction Company, and the Cleveland and Chagrin Falls Traction Company, will be ordered to cancel tariffs now under suspension, and granted authority to file on less statutory notice to become effective January 1st, 1920, new tariffs providing a rate of three-quarters of a cent per pound.

Objection has also been made to a ruling carried in the tariffs of the last two named companies, to the effect that newspapers will only be carried in vestibule of car when space will permit. The Commission is of the opinion that service of this kind, to be of any benefit either to the public, the newspapers or the carrier itself, must be regular, and the utmost confusion would ensue should the carriers, by enforcing such a rule, receive newspapers for transportation one day, and refuse them the next.

It will therefore be ordered that the ruling in question be eliminated from the new tariffs to be filed to take effect January 1920.

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No. 1817—In the Matter of the Application of The Chesapeake & Ohio Railway Company of Indiana, for Consent and Authority to Issue Bonds. Prayer Granted.

(Dated December 8, 1919.)

This day after due notice to all parties in interest, this matter came on to be heard and was heard upon the application, filed November 22nd, 1919, of The Chesapeake & Ohio Railway Company of Indiana, (a corporation organized under the laws of the state of Indiana, and owning and operating a line of railway in said state and the state of Ohio), asking the consent and authority of the Public Utilities Commission of Ohio to issue its first mortgage, five per cent, twenty-year, gold bonds due 1930, of the total principal sum of four hundred and forty-one thousand dollars, in satisfaction of indebtedness, in the aggregate amount of \$352,800.00, incurred in for and on account of the construction of additions, extensions and improvements to its property and facilities in the period subsequent to October 31st, 1917, and including May 31st, 1919.

Upon consideration whereof and being fully advised in the

premises, the commission finds that, within the period November 1st, 1917, to May 31st, 1919, the applicant incurred an indebtedness of the sum of \$352,800.00 for and on account of the construction, completion, extension and improvement of its facilities and the acquisition of property, and that the issue and disposition of said bonds is reasonably required and necessary for the lawful funding of said indebtedness, and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Chesapeake & Ohio Railway Company of Indiana be, and hereby it is authorized to issue its first mortgage, five per cent., twenty-year, gold bonds, due 1930, of the total principal sum of four hundred and forty-one thousand dollars (\$441,000.00.) It is further

Ordered, That said first mortgage bonds be, by the applicant, issued and delivered to the creditors of said company in full satisfaction of applicant's indebtedness, of the sum of \$352,800.00 (of a whole of \$353,327.80) incurred in the construction of additions, extensions and improvements to its property and the provision of additions and extensions to its facilities within the period subsequent to October 31st, 1917, and including May 31st, 1919, as fully set out in a detailed statement marked "Schedule A," appended to the application herein, which hereby is made a part of this order by reference. It is further

Ordered, That the issue and disposition of the aforesaid bonds in excess of the applicant's issued and outstanding capital stock be, and hereby it is specifically consented to, authorized and approved. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of its said bonds and of the satisfaction of its said indebtedness pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

The Lien of Assessments Growing Out of Proceedings Under the so-called Cass Highway Act (106 O. L. 574) Attaches on the Day That Such Assessments Are Approved by the Township Trustees, and the Lien of Assessments Growing out of Proceedings Under the So-called White-Mulcahy Act (107 O. L. 69) Attaches on the Day that Such Assessments are Approved and Confirmed by the County Commissioners or Township Trustees.—The Duty of Designating Locations Where Maintenance and Repair Work is to Be Done on Highways Which the County is Directed or Authorized to Maintain and Repair by the Use of Funds Mentioned in Sections 6596-1 and 6596-1a General Code, (108 O. L. 503), Rests with the County Commissioners and not with the County Surveyor.

No. 862—(Opinion Dated December 9, 1919.)

Hon. W. R. White, Prosecuting Attorney, Gallipolis, Ohio.

Dear Sir: Your letter of recent date is received reading as follows:

"I desire the opinion of your department on two separate questions.

I have been requested by the county auditor and treasurer to ask your department for an opinion as to when the lien attaches on road assessments, that is:

When does the assessment made against the abutting property for the purpose of paying a part of the construction cost of an inter-county highway constructed under the supervision of the state highway department become a lien on said property?

My contention is that the last two or three paragraphs of Section 1214 as found on page 129 of Ohio Laws, Vol. 107, fixes the time when the lien attaches.

The second question I desire to ask your department is:

Are the commissioners compelled to turn over to the county surveyor all of the road repair money to be used and expended by him as he may see fit or shall the commissioners retain control of the money and direct the surveyor on which roads they desire the repairs to be made. In other words, if the surveyor is authorized to repair the roads do the commissioners lose control of the money and lose their right to dictate where the money shall be expended?

Your first question as to the date at which an assessment in connection with the state aid highway improvement became a lien, cannot be answered generally, but must have reference to the statutes which were in force at the time the improvement became a pending proceeding. This latter subject is dealt with in an opinion of this department of date April 29, 1918, found in opinions of Attorney General for 1918 at page 624.

As to improvements which became pending proceedings on and after June 28, 1917, the answer to your first question is comparatively simple, since the statutes in point are sections 1214 and 1216 as amended in 107 O. L., pages 129, 130, section 1214 because of its length need not be here quoted in full. It makes provision as to the shares to be borne by the county, township and property owners concerned in a state aid highway improvement, and specifies the steps to be taken by the county commissioners or township trustees as the case may be, in connection with the assessment against the adjoining lands. Briefly, these steps embrace the making of a tentative apportionment by the county surveyor, the filing of such apportionment with the county commissioners or township trustees; publication of notice that such apportionment has been made; opportunity to property owners to object to the apportionment; and hearing by the commissioners upon such apportionment, with the right of said commissioners to make such change in the apportionment as they find just and equitable. The last sentence of said section is:

"Such assessments when so approved and confirmed shall be a lien on the land chargeable therewith."

Section 1216, among other things, provides that the assessments shall be certified to and placed by the county auditor upon a special duplicate to be collected as other taxes, etc. Very plainly, by the provisions of the last sentence of section 1214 as above quoted, the assessments become a lien upon the date on which they approved and confirmed by the county commissioners.

The answer to your first question, so far as it concerns assessments made in connection with improvements which became pending proceedings under the so-called Cass Highway Act is not so readily arrived at. The sections of the Cass law which relate to assessments are applicable to proceedings which became pending proceedings between the first Monday in September, 1915, and the 28th day of June, 1917.

Section 1214 as it appeared in said Cass law (106 O. L. 637),

after providing for the percentages to be borne by the county township and property owners, recited:

"* * * * The township trustees shall apportion the amount to be paid by the owners of the abutting property according to the benefits accruing to the owners of the land so located. At least ten days' notice of the time and place of making such apportionment shall be given to the persons affected thereby, and an opportunity given them to be heard. The township trustees shall cause a notice to be served upon abutting property owners, stating the time and place for hearing on the apportionment and the amount to be paid by each abutting property owner. In case any of the abutting property owners are non-residents, such notice shall be given by one publication in some newspaper of general circulation in the county. If the improvement lies in two or more townships, the amount to be paid by each, shall be apportioned according to the number of lineal feet of the improvement lying in each township."

Section 1216 as it appeared in the Cass law (106 O. L. 638) reads as follows:

"The township trustees shall certify the assessments so made to the county auditor, who shall place them upon the tax duplicate against the several properties benefited as shown by said assessment list. The county treasurer shall collect such assessments in the same manner as other taxes are collected. The township trustees shall pay to the county the portion of the cost and expense apportioned to the township, in the same manner as other claims against the township are paid."

We are thus left without any exact statement in the statutes themselves as to when the assessment should actually become a lien. However, we are not without judicial authority which by analogy furnishes an answer to your inquiry.

In the case of *Cattell vs. Putnam*, 73 O. S. 147, the Supreme Court had occasion to consider the question of the time at which the lien of an assessment under the then existing ditch statutes attached to affected lands. The Supreme Court, in the course of the opinion, makes a brief abstract of the county ditch statutes; and it will be seen that those statutes do not in terms fix the date at which the lien attached. It will be noted also that the statutes provided for a preliminary apportionment before the time came for letting the work. The fact that such preliminary apportionment was provided for gave rise to the claim which was being made in the case that the lien attached when the preliminary apportionment was approved. However, the Supreme Court called attention to

and quoted the provisions of section 4479 of the Revised Statutes as follows:

"When the working sections of the improvement are let, as hereinbefore provided, and the costs and expenses of location and construction, and all compensation and damages are ascertained, the commissioners shall meet and determine in what time and in what number of assessments they will require the same to be paid, and order that the assessments, as made by them, be placed on the duplicate accordingly, against all the lots or lands, or corporate roads or railroads assessed, and they shall also determine whether they will issue bonds to pay such costs and expenses."

The conclusion of the Supreme Court as set out in the syllabus is as follows:

"An assessment for a county ditch is not made by the county commissioners until it is ordered by them to be placed on the duplicate against the lots or lands or corporations or railroads assessed as provided by Section 4479 of the Revised Statutes."

Another case which may be mentioned, arising under the same ditch statutes as those just referred to, was that of *Lackey vs. Sheriff*, 33 W. L. B. 38. The report of that case shows that in connection with ditch proceedings pending before them, certain county commissioners on February 2, 1886, made a finding to the effect that assessments be placed on the special duplicate, etc., and that on February 16, 1886, plaintiff delivered to defendant his warranty deed dated February 13, 1886, for the affected premises, and at the time of delivery of said deed no part of the ditch had been construed and neither of the parties had any actual knowledge of the location. The Common Pleas Court found as its conclusion of law that the ditch assessment became a valid lien on February 2, 1886, "and that on both February 13th, and February 16th, 1886, it was an encumbrance against the real estate in the petition described."

The report of the case further shows that the Circuit Court affirmed the judgment of the Court of Common Pleas, and that the Supreme Court on January 15, 1895, affirmed the judgment without report.

The principles embodied in the two cases cited would seem to be fully applicable to sections 1214 and 1216 as they existed in the Cass law, with the result that it is to be concluded that the lien of an assessment under those sections attaches on the date that the township trustees approve the assessments. This conclusion is

not affected by the fact that the further duty rests with the township trustees of certifying the assessments to the county auditor; because it is quite evident that such action is to be considered as a mere ministerial duty on the part of the trustees, and hence is not to be treated as a jurisdictional step in the perfection of the lien. See *Otto vs. State*, 9 C. C. (N.S.) 293; 19 O. C. D. 203.

The assessment statutes as they existed before the passage of the Cass Act were quite similar to their form as appearing in the Cass Act; so that it is believed that the foregoing discussion will serve to answer your inquiry, although, as above noted, the exact form of the statutes as applicable to a given proceeding must be considered in determining the date at which the lien attaches.

In your second question you refer to "road repair money"; and from the nature of your inquiry, it is assumed that you refer to the proceeds of the levy which has been heretofore authorized by section 6956-1. That section was amended and supplemented at the recent session of the General Assembly, and its new form set forth in sections 6956-1 and 6956-1a (108 O. L. 503) is as follows:

"Section 6956-1. After the annual estimate for the county has been filed with the county commissioners by the county surveyor, and the county commissioners have made such changes and modifications in said estimate as they deem proper, they shall then make their levy for the purposes set forth in said estimate, upon all the taxable property of the county not exceeding in the aggregate two mills upon each dollar of the taxable property of said county. Such levy shall be in addition to all other levies authorized by law for said purposes, but subject, however, to the limitation upon the combined maximum rate for all taxes now in force. The provisions of this section shall not, however, prevent the commissioners from using any surplus in the general funds of the county for the purposes set forth in said estimate.

"Sec. 6956-1a. The board of county commissioners of each county shall provide annually by taxation an adequate fund for the maintenance and repair of improved county highways. Such fund shall be provided by levies made under Sections 6926, 6927 and 6956-1 of the General Code and the several sections amendatory thereof or supplementary thereto. The maintenance and repair fund so provided shall not be less than one hundred dollars for each mile of improved county highway within the county. Such levy or levies for maintenance and repair purposes shall be separately set forth in the annual budget of the county commissioners presented to the budget commission, and the maintenance and repair levies so made by the county commissioners pursuant to the provisions of this section shall be preferred levies as against any other levies made

by the commissioners for county road purposes. Should the budget commission of any county be unable, by reason of the limitations of law, to allow all of the road levies made by county commissioners, such reductions as are necessary therein shall be first made in levies other than those for maintenance and repair purposes made under the provisions of this section. The fund produced by such levy or levies for maintenance and repair purposes shall not be subject to transfer by order of court or otherwise and shall be used solely for the maintenance and repair of the improved county roads within the county. The provisions of this section shall not prevent the county commissioners from using any other available road funds for the maintenance and repair of improved county roads."

Your inquiry as to whether the expenditure of the accruals of such levy is to be made under the direction of the county surveyor or of the county commissioners doubtless arises through consideration of certain broad provisions of the duties of the county surveyor. As to that officer, (it is noted that section 7184 opens with the statement:

"The county surveyor shall have general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways within his county under the jurisdiction of the county commissioners."

Section 7192 provides in part:

"The county surveyor shall supervise the construction, improvement, maintenance and repair of the highways, bridges and culverts under the jurisdiction of the county commissioners."

Section 2792, in referring to the county surveyor, contains the statement:

"He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads * * * constructed under the authority of any board within and for the county."

However, in contrast to the provisions just quoted, there are other statutory provisions which leaves no doubt that the primary duty of directing the expenditure of the proceeds of the levy above authorized rests with the county commissioners; among which provisions may be noted the following:

The last sentence of section 6956-1 and the last sentence of section 6956-1a above quoted are to the effect that the provisions of said respective sections shall not prevent the county commissioners

"from using other available road funds for the maintenance and repair of improved county roads."

Section 2788-1 as recently enacted (108 O. L. 497) after making reference to road maintenance and repair work under the supervision of the county surveyor, states that:

"The county surveyor, when authorized by the county commissioners, shall appoint a maintenance supervisor or supervisors to have charge of the maintenance of improved highways within a district or districts established by the commissioners and surveyor and containing not less than ten miles of improved county roads. Such maintenance supervisor shall act under the direction of the county surveyor, and the county surveyor, when authorized by the county commissioners, shall establish a patrol or gang system of maintenance under the direct charge of such supervisor. The compensation of such supervisor shall be fixed upon a per diem basis by the county commissioners and shall be paid out of the road repair or county road fund upon the approval of the county surveyor."

Section 7199 provides that:

"The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account."

Section 7200 authorizes the county commissioners to purchase machinery, tools and equipment for use in road maintenance and repair,—the cost to be paid out of the road funds of the county.

Section 7203 permits the county commissioners or the county surveyor when authorized by the county commissioners to make purchase of road material, etc., from public institutions.

Section 7214 reads in part:

"The county commissioners or township trustees may contract for and purchase material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county. * * *"

The foregoing references make plain that there is no conflict between the statutes relating to county commissioners and those prescribing the duties of the county surveyor. On the one hand, direct authority is conferred on the county commissioners to purchase machinery, equipment and material, and on the other hand, the county surveyor is without authority to make purchases or employ teams and labor without the previous authorization of the

county commissioners. In this situation, it necessarily follows that power is lodged in the commissioners to say where the material will be used and where the laborers will be employed; for otherwise the commissioners might refuse to purchase material or to authorize the county surveyor to employ teams and laborers, etc. The various statutes quoted with reference to the county surveyor plainly indicate that the range of his activity is confined to taking charge and supervision of repair and maintenance work after such work has been provided for and ordered by the county commissioners.

Two other statutes lending strong support to the conclusion just stated are sections 7464 and 7467. Subdivision (b) of section 7464 reads:

“* * * (b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, and all such roads shall be maintained by the county commissioners.”

The first sentence of section 7467 reads:

“The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; provided, however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the road under the control of the other.”

Specific answer to your two questions may therefore be found in the following summary:

(1) The lien of assessments growing out of proceedings under the so-called Cass Highway Act (106 O. L. 574) attaches on the day that such assessments are approved by the township trustees, and the lien of assessments growing out of proceedings under the so-called White-Nulcahy Act (107 O. L. 69) attaches on the day that such assessments are approved and confirmed by the county commissioners or township trustees.

(2) The duty of designating locations where maintenance and repair work is to be done on highways which the county is directed or authorized to maintain and repair by the use of funds mentioned in sections 6956-1 and 6955-1a General Code (108 O. L. 503), rests with the county commissioners and not with the county surveyor.

A Mayor or Magistrate May Legally Suspend or Modify a Sentence, Including the Power to Grant Time to the Defendant for the Payment of a Fine, Provided the Suspension is Not for a Longer Period Than Two Years, and That the Defendant Has Not Previously Been in Prison for Crime, if the Same is Done Before Said Sentence is Carried Into Execution and in the Manner as Provided by Law.

No. 855—(Opinion Dated December 6, 1919.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: I am in receipt of your communication of recent date, which is as follows:

"We respectfully request your written opinion upon the following matter:

"The judge of a municipal court of a certain city in Ohio sentenced a defendant to pay \$50.00 and costs, and allows the defendant thirty days in which to pay \$25.00 of the fine and costs and sixty days in which to pay the balance, immediately releasing the accused from custody, the terms of payment being entered on the docket and made a part of the court record.

"Question: May a mayor or magistrate legally grant time for payment of fines and costs and release the prisoner as above stated?"

The suspension or modification of a sentence is controlled by what are known as the probation statutes of Ohio, and those sections of said law which I think advisable to consider in connection with your question are as follows:

Section 13706 G. C. (108 O. L., 144).

"In prosecutions for crime, except as hereinafter provided, where the defendant has pleaded or been found guilty, and the court or magistrate has power to sentence such defendant to be confined in or committed to the penitentiary, the reformatory, a jail, workhouse, or correctional institution, and the defendant has never before been imprisoned for crime, either in this state or elsewhere, and it appears to the satisfaction of the court or magistrate that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and that the public good does not demand or require that he shall suffer the penalty imposed by law, such court or magistrate may suspend the execution of the sentence, at any time before the sentence has been carried into execution, and place the defendant on probation in the manner provided by law."

Section 13707 G. C.

"This sub-division of this chapter shall not affect the laws providing the method of dealing with juvenile delinquents, nor shall detention in an institution for such juvenile delinquents be considered as imprisonment."

Section 13708 G. C.

"No person convicted of murder, arson, burglary of an inhabited dwelling house, incest, sodomy, rape without consent, assault with intent to rape, or administering poison, shall have the benefit of probation."

Section 13711 G. C.

"When the sentence of the court or magistrate is that the defendant be imprisoned in a workhouse, jail or other institution, except the penitentiary or the reformatory, or that the defendant be fined and committed until such fine be paid, the court or magistrate may suspend the execution of said sentence and place the defendant on probation, and in charge of a probation officer named in such order, in the following manner:

1. In case of sentence to a workhouse, jail or other correctional institution, the court or magistrate may suspend the execution of the sentence and direct that such suspension continue for such time, not exceeding two years, and upon such terms and conditions as it shall determine.

2. In case of a judgment of imprisonment until a fine is paid, the court may direct that the execution of the sentence be suspended on such terms as it may determine and shall place the defendant on probation to the end that said defendant may be given the opportunity to pay such fine within a reasonable time; provided, that upon payment of such fine, judgment shall be satisfied and the probation cease."

While the statutes are reasonably clear as to the authority of courts or magistrates to suspend or modify a sentence, when the accused has not been previously imprisoned for crime, in the construing of such law the courts have encountered some difficulty in determining the time at which the authority to suspend a sentence terminates after the same is pronounced. However, section 13706 supra was amended 108 O. L. 144) evidently for the manifest purpose of clearing up this point. Said section is the same as the original with the exception of the following clause, which was added in the amendment: "at any time before such sentence is carried into execution."

Paragraph 2 of section 13711 supra specifically authorizes a court or magistrate to suspend the execution of a sentence in case

of a judgment of imprisonment until the fine is paid, permitting the defendant to pay such fine within a reasonable time.

In specific answer to your inquiry I am of the opinion that a mayor or magistrate may legally suspend or modify a sentence, including the power to grant time to the defendant for the payment of a fine, provided the suspension is not for a longer period than two years and that the defendant has not previously been imprisoned for crime, if the same is done before said sentence is carried into execution and in the manner as provided by law.



In Cities Having a Population of Less Than 25,000, the General District Health Board, Under the Hughes Health Law, Has Power to Appoint a Local Registrar of Vital Statistics, as Provided in Section 201 General Code.

No. 782—(Opinion Dated November 15, 1919.)
Department of State, Bureau of Vital Statistics, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"Section 201 General Code provides for the appointment of local registrars in townships, villages and cities, and inasmuch as the Hughes health bill provides for the abolishment of the present health organization in cities under 25,000, I would like to have you clear up the legal points involved.

"Section 15 of the Hughes health bill seems to me to confer the power now given these municipal boards of health to the district boards of health. This matter affects registration in a great many cities in the state and I herewith request your office to give an opinion confiding what course of action, if any, should be taken by this bureau."

By personal conference it is learned that your question relates to the power of appointment of local registrars of vital statistics in cities under twenty-five thousand inhabitants not included in municipal health districts, as section 201 General Code, *infra*, provides that in villages and townships the clerks are *ex officio* local registrars. Sections 197 and 201 General Code and section 15 of House Bill 211 (Hughes health act), are pertinent to your inquiry.

The purpose of sections 197 et seq. General Code is to establish "a state system of registration of births and deaths", as stated in section 197 General Code.

Section 201 in part provides:

"In villages the village clerk, and in townships the town-

ship clerk, shall be the local registrar, and in cities the city board of health shall appoint a local registrar of vital statistics, and each shall be subject to the rules and regulations of the state registrar, the provisions of this chapter and to the penalties provided by law."

Section 15 of House Bill 211 in part provides:

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties * * * shall be construed to have been transferred to the district board of health by this act."

It should be noted that neither in this section nor in any other section of House Bill 211 is there any specific reference to or change in the method of appointing local registrars, as provided in section 201.

Section 15, by its clear and comprehensive grant and transfer to the district board of health of "all the powers and * * * duties now conferred and imposed by law upon the board of health of a municipality", furnishes a complete answer to your inquiry, and as one of the powers and duties then conferred and imposed upon a board of health of a city was to appoint the local registrar, it logically follows that the exercise of this power and performance of this duty must "be construed to have been transferred to the district board of health", as provided by this section.

Therefore you are advised that in cities having a population of less than 25,000, the general district health board has power to appoint the local registrar, as provided in section 15 of House Bill 211, and section 201 General Code.

SUPREME COURT

MOTION DOCKET

10222—The Toledo & Ohio Central Ry. Co. et al. v. The Village of Hartford et al. Motion by The T. & O. C. Ry. Co. for an order directing the Court of Appeals of Licking county to certify its record. Sustained.

10223—The Toledo & Ohio Central Ry. Co. et al. v. Village of Hartford et al. Motion by Emma Benner et al. for an order directing the Court of Appeals of Licking county to certify its record. Sustained.

10314—The Factory Site Co. v. D. W. Curtis. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10331—Harry W. Kress v. The State of Ohio. Motion for an order directing the Court of Appeals of Miami county to certify its record. Overruled.

10332—The Factory Site Co. v. D. W. Curtis. Motion by defendant to dismiss petition in error in cause No. 16425 on the general docket. Sustained.

10334—William M. Dollinger v. William H. Campbell. Motion for an order directing the Court of Appeals of Crawford county to certify its record. Overruled.

10336—The Cott-Mohrman Co. v. The Massillon Foundry & Machine Co. et al. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

10337—Clara Nicholson v. The Cleveland Ry. Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10339—Walter F. Kirn et al. v. The Kraus Plumbing & Heating Co. et al. Motion for an order directing the Court of Appeals of Summit county to certify its record. Overruled.

10340—The Peerless Electric Co. v. William A. Polly. Motion for an order directing the Court of Appeals of Trumbull county to certify its record. Overruled.

10341—The Realty Title & Investment Co. v. The Fairport, Painesville & Eastern R. R. Co. et al. Motion for an order directing the Court of Appeals of Lake county to certify its record. Overruled.

10342—The State of Ohio v. Peter Cafarelli. Motion for leave to file petition in error to the Court of Appeals of Summit county. Overruled.

10344—The St. Clair Hospital Co. v. Pearl Foster. Motion for an order directing the Court of Appeals of

Franklin county to certify its record. Overruled.

1034—Earnest Prince v. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Franklin county. Sustained.

10347—Ire M. Price, Exr., v. Anna R. Roberts. Motion for an order directing the Court of Appeals of Licking county to certify its record. Overruled.

GENERAL DOCKET

10240—Frank M. Raymund, Exr., v. John P. Williams et al. Franklin. Judgment affirmed on authority of Johnson v. Johnson, 51 Ohio St., 446.

16254—The Western & Southern Life Ins. Co. v. Alice R. Horn. Hancock. Judgment of Court of Appeals reversed and that of Common Pleas affirmed.

16260—The State ex rel. George H. Phelps v. W. H. Tomlinson, Supt. of Insurance of Ohio. In mandamus. Writ denied.

16265—Eugene Suter v. The Farmers Fertilizer Co. Franklin. Judgment reversed. Cause remanded.

16272 — Charles W. Hammond, Treas., v. John H. Winder, Recr. Perry. Judgment reversed.

16274—Summer P. Shelley v. Mathias Reiser, Jr., Treas., et al. Henry. Judgment affirmed.

16289—Elizabeth Kuerze v. The Western German Bank et al. Hamilton. Judgment affirmed.

16296—The State of Ohio v. Walter Richardson. Mahoning. Judgment affirmed.

16297—Grover E. Smith, Admr., v. The Cleveland Life Ins. Co. Lucas. Judgment reversed on authority of Gibbs v. Village of Gard, 88 Ohio St., 34.

16308—Columbia Graphophone Co. v. Sare E. Slawson. Cuyahoga. Judgment affirmed.

16313—Grant DeWitt & Son v. The Industrial Commission of Ohio. Petition to vacate order of Industrial Commission. Demurrer sustained. Petition dismissed at cost of plaintiff.

16350—The State ex rel. William L. Silvey et al. v. The Miami Conservancy District Co. Montgomery. Judgment affirmed.

16374—The City of Lima v. The Public Utilities Commission of Ohio et al. Public Utility Commission. Order reversed.

16444—Edward W. Edwards v. John H. Matthews. Gallia. Judgment reversed.

16456—The State ex rel. Clara M. Fridlinger v. The Industrial Commission of Ohio. et al. In mandamus. Dismissed on motion of relator without record and without prejudice.

SECRETARY OF STATE

NEW CORPORATIONS

Hydraulic Steel Co., Cleveland, \$8,500. James H. Foster, H. P. McIntosh, Jr., W. T. Kinder, S. R. Tolles, R. C. Hyatt.

O'Brien & Richards Co., Cincinnati, \$10,000. Bernard G. O'Brien, V. William Bennett, Charles G. Richards, Daniel E. O'Brien, William E. Richards.

Service & Supply Garage Co., East Youngstown, \$15,000. Martin Lesnak, John Kich, John Rohrbacher, Elmer E. Hughes, Andrew Lukac.

Massillon Tiger Athletic Co., Massillon, \$10,000. Louis W. Mauger, John J. Donahue, J. A. Shatdnagle, Fred J. Becker, W. C. Brown.

Two Hatchett Oil Co., Columbus, \$250,000. A. Simons, John W. Zuber, P. O. Johnson, John A. Dodd, Wm. Leith.

Walters Co., Circleville, \$10,000. Edwin Walters, Barton Walters, H. B. Weaver, M. E. Ebert, Homer Walters.

People's Market Co., North Baltimore, \$15,000. Adam Exline, Perry Rudisill, E. J. Grosvernor, F. P. Clark, M. H. Brown.

Ohio Shale Brick & Tile Co., Cleveland, \$40,000. C. A. Hagely, L. A. Dunham, H. B. Hershey, W. A. Miller, O. J. Horn.

Buckeye Forging Co., Cleveland, \$50,000. B. Copland, Frank R. Merchant, Peter C. Henderson, Harry F. Dover, H. J. DeVine.

Youngstown Shoppes, Youngstown, \$50,000. T. H. Roberts, William F. Proctor, C. W. Stillson, I. E. Sprankle, Russell McKay.

Lagrange Street Amusement Co., Toledo, \$100,000. Walter L. Grudzin-ski, Rosa Bialorucki, Nicholas J. Walinski, Walter Nowak, Stephen Grudzin-ski.

Able Safety Brake Co., Cleveland, \$25,000. F. H. Abel, J. P. Miller, John M. Schiely, E. B. Comyns, E. Brown.

Marvel Needlecraft Co., Cleveland, \$10,000. Lee E. Skeel, Roy C. Taylor, A. E. Boyle, E. M. Starger, N. W. McFadden.

Bellefontaine Oil Products Co., Bellefontaine, \$100,000. J. R. William-

son, B. C. Cushman, A. R. Filson, J. C. Tibbles.

Lymon-Reed Shirt Co., Cleveland, \$25,000. A. J. Schanfarber, J. M. Berne, L. M. Ulmer, E. L. Mueller, B. D. Gordon.

Ventor Drug and Chemical Co., Toledo, \$10,000. C. H. Wessel, E. Willson, J. E. Jones, R. D. Jones, C. N. Johnston.

Tip Top Garage & Supply Co., Cleveland, \$10,000. Lizzie Rosenfeld, Morris Rosenfeld, Morris Becker, J. C. Lipkin, Mortimer L. Stener.

Research Engineering Co., Dayton, \$21,000. O. H. Spencer, Thomas E. Garster, B. E. Moehlman, Elmer M. Siler, Carl E. Siler.

American Coal Exchange Co., Columbus, \$25,000. P. F. Wilkinson, Charles S. Hauck, W. H. Baker, V. R. Mayfield, J. V. Morgan.

Collinwood Savings and Loan, Cleveland, \$500,000. M. U. McFadden, A. M. Duffy, H. M. Berg, G. E. Fischer, Neil A. Collins.

Summit Transit Co., Cleveland, \$50,000. Charles A. Anchut, Morris Becker, Frank Leichtman, J. C. Lipkin, G. Ehrlich.

Randolph Desk Co., Cleveland, \$100,000. R. L. Randolph, R. J. Sachs, A. H. Plebach, M. Sainsbury, E. A. Bin-yon.

Kee-Spears Co., Akron, \$250,000. A. J. Kee, G. H. Doolittle, H. W. Hagel-barger, H. G. Sours, E. E. Zesiger.

Goodyear Oil & Gas Co., Columbus, \$5,000. J. L. Zimmerman, Albert C. Goodyear, M. T. Brinker, C. K. Yontz, J. W. Newton.

Railways Salvage Co., Cleveland, \$10,000. R. Kornfeld, F. H. Townsend, Frank F. Gentsch, H. Lindale Smith, E. B. Kavanagh.

Federal Radiator Co., Zanesville, \$525,000. A. T. Baker, A. L. Rea, H. Knoedler, C. C. Fergus, E. A. Evans.

Wust Auto Supply Co., St. Marys, \$10,000. Edw. Wust, Edw. F. Chandler, Louis E. Wust, Elizabeth M. Wust, Lelia M. Chandler.

Ohio Construction Co., Berea, \$10,000. W. H. Colton, L. M. Lanning, M. E. Weatherwax, J. O. Quinlan, Charles E. Weatherwax, M. M. Quinlan.

Normandic Realty Co., Columbus, \$150,000. Perry B. Whitsit, F. C. Rice, A. W. Hershey, W. F. Davidson, Fred W. Atcherson.

New Century Realty Co., Cleveland, \$10,000. Frank M. Pollock, M. DeVaughn, Benj. F. Fiery, M. J. Monahan, B. W. Jacobi.

Bondy Windsheld Deflector Co., Cleveland, \$10,000. Sidney T. Hurt, Samuel Horwitz, Richard Bondy, Edmund R. Bondy, M. A. Friedman.

Curtice Printing & Lithographing Co., Akron, \$200,000. W. P. Cope, T. O. McAdoo, W. V. Smith, Charles K. Strobel, George L. Curtice.

Northern Building Co., Cleveland, \$2,500. E. C. Wolfe, A. J. Pejsa, L. M. Sewell, E. W. McGraw, Harry L. Delbel.

Automobile Owners' Protective League Co., Columbus, \$5,000. Philip York, J. P. Berk, C. M. Hunt, Edward T. Powell, Howard G. Doll.

C. L. Werst Printing Co., Sidney, \$50,000. C. L. Werst, Martha L. Werst, R. H. Trego, J. E. Russell, H. T. Ruese.

Davies-Chism-Davies Co., Columbus, \$40,000. H. K. Davies, G. F. Chism, C. H. Davies, M. D. Cronk, H. Byer.

United Amusement Co., Cleveland, \$10,000. D. N. Grill, V. D. Engle, C. J. Vanderwerf, Keith Lawrence, F. A. Lennie.

DeMooy Electric Manufacturing Co., Cleveland, \$600,000. Keith Lawrence, Edward L. Neuswander, Henry Eukler, F. A. Lennie, E. P. Moffatt.

Accurate Measure Oil Co., Gahanna, \$25,000. Edw. G. Brenaman, Ella Brenaman, Gail Brenaman, Byel Brenaman, Ora B. Nosimann.

Iron Bank, Jackson; \$25,000. J. C. Hurd, C. R. Brown, James hCestnut, A. L. Ervin, Ora O. Evand.

W. J. Brown Co., Columbus; \$50,000. Robert W. Smith, George A. Wood, Ernest P. Lemnitzer, C. B. Seltcam, Pauline Cozad.

Akron Timer Co., Akron; \$10,000. L. E. Gaume, E. K. Barnes, O. W. Adams, Harry Hosterman, Foster Napp.

Increases

White Motor Co., Cleveland; \$20,000 to \$25,000,000.

Twin Dry Cell Battery Co., Cleveland; \$50,000 to \$200,000.

Middletown Artificial Ice Co., Middletown; \$100,000 to \$225,000.

Interlocking Cord Tire & Belt Co., Akron; \$150,000 to \$1000,000.

Vero Beach Development Co., Cleveland; \$25,000 to \$75,000.

Fred W. Albrecht Grocery Co., Akron, \$1,000,000 to \$1,500,000.

North Baltimore Tractor & Machine Co., North Baltimore, \$30,000 to \$50,000.

Willard Press & Tool Co., Cincinnati, \$10,000 to \$25,000.

C. A. Bartlett Co., Norwood, \$15,000 to \$30,000.

Conrad Rubber Co., Cleveland, \$1,000 to \$75,000.

A. Teachout Co., Cleveland, \$750,000 to \$100,000.

Artificial Ice & Storage Co., Canton, \$100,000 to \$150,000.

Garford Motor Truck Co., Lima, \$5,000,000 to \$10,000,000.

M. Englander & Son Co., Cleveland, \$10,000 to \$20,000.

Progressive Tool and Engineering Co., Dayton, \$25,000 to \$50,000.

Allan A. Smith Co., Toledo, \$120,000 to \$150,000.

Harr Tailoring Co., Youngstown, \$10,000 to \$25,000.

Bennett Register & Printing Co., Lisbon, \$25,000 to \$50,000.

Pennett Register & Printing Co., Lisbon, \$50,000 to \$75,000.

Owen Tire & Rubber Co., Bedford, \$850,000 to \$1,250,000.

Owen Tire & Rubber Co., Bedford, \$650,000 to \$1,750,000.

Branagan Roofing Co., Cleveland, \$25,000 to \$40,000.

North Baltimore Tractor & Machine Co., North Baltimore, \$30,000 to \$50,000.

S. L. & G. Dress Co., Cleveland, \$5,000 to \$100,000.

Venedoc'a Electric Light Co., Venedocia, \$5,000 to \$10,000.

Pockrandt Paint Mfg. Co., Akron, \$10,000 to \$25,000.

United Fisheries Co., Sandusky, \$25,000 to \$50,000.

Progressive Tool and Engineering Co., Dayton, \$25,000 to \$50,000.

M. Englander & Son Co., Cleveland, \$10,000 to \$20,000.

Decrease

Ford-McCaslin Co., Cleveland, \$25,000 to \$2,500.

Hough Investment Co., Cleveland, \$1,000 to \$1,000.

L-C-R Storage Battery Co., Dayton, \$55,000 to \$20,000.

PUBLIC UTILITIES COMMISSION

No. 1827—In the Matter of the Application of The Springfield Railway Company for Consent and Authority to Issue \$270,000 First Mortgage Five Per Cent. Bonds. Prayer Granted.

(Dated December 22, 1919.)

This day this matter came on for consideration upon the application of The Springfield Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue first mortgage, five per cent. bonds of the principal sum of two hundred and seventy thousand dollars, the proceeds arising from the sale thereof to be used to partially reimburse its treasury for eighty per cent. of the moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, for capital purposes to January first, 1918.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that within the five years next preceding the date of the filing of the application herein and to the first day of January, 1918, the applicant actually expended from its treasury for the acquisition of property and the construction, completion, extension and improvement of its facilities, the sum of \$338,693.78, none of which was obtained or secured by the issue of applicant's aforesaid bonds is reasonably required and the money to be procured thereby necessary for the partial reimbursement of its treasury for the aforesaid uncanceled capital expenditures therefrom, and is satisfied that consent and authority for the issue and disposition of said bonds should be granted.

And it appearing further that the applicant now has issued and outstanding capital stock of the par value of \$1,500,000.00 and bonds of the principal sum of \$1,268,500.00, the Commission further finds that the issue of applicant's bonds of the principal sum of \$38,500.00 in excess of applicant's issued and outstanding capi-

excess of

Errata.

Through inadvertence pages 281 to 380 and 437 to 536 were erroneously numbered. The volume is complete. There are no Pages missing. We are calling attention to this so as to avoid confusion.

bonds should be specifically consented to, authorized and approved. It is, therefore,

Ordered, That said The Springfield Railway Company be, and hereby it is authorized to issue its first mortgage, five per cent. bonds of the principal sum of two hundred and seventy thousand dollars, (\$270,000.00), and that said bonds be sold for the highest price obtainable, but not less than eighty percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That, pending a sale of said bonds, the same may be pledged as collateral security for loans, which loans shall be of the greatest sum negotiable but in no event less than eighty per cent. of the par value of the bonds deposited as collateral security therefor. It is further

Ordered, That the issue and disposition of \$38,500.00, principal sum, of said bonds in excess of applicant's issued and outstanding capital stock and the expenditure of the proceeds of such excess as hereinafter provided, be, and hereby they specifically are consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said bonds be devoted to and used for the following purposes, and no other, to wit, the partial reimbursement of applicant's treasury for eighty percentum of the sum of \$338,693.78, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom to January first, 1918, for the acquisition of property and the construction, completion, extension and improvement of its facilities, It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

No. 1844—In the Matter of the Application of The Sandusky Gas and Electric Company for Consent and Authority to Issue \$100,000.00 Bonds. Prayer Granted.

(Dated December 17, 1919.)

This day this matter came on for consideration upon the application of The Sandusky Gas and Electric Company, (a corporation duly organized and existing under and by virtue of the laws of

the State of Ohio), asking the consent and authority of the Commission to issue, in the capitalization of uncanceled additions and extensions to its plant heretofore provided and now in course of provision, of the total net cost of \$126,000.00, its first improvement and refunding mortgage bonds of the principal sum of one hundred thousand dollars, \$20,000.00, principal sum, of said bonds to be delivered to the trustee under its said mortgage to replace a similar amount of such bonds specifically reserved for the retirement of outstanding bonds of an earlier issue, but, through oversight, heretofore issued and disposed of in the financing of capital additions to its investment, and the proceeds arising from the sale, or pledge, of \$80,000.00, principal sum, of said bonds, to be used to reimburse its treasury for eighty per cent. of the moneys, not secured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, between the dates October first, 1918, and November thirtieth, 1919, for the construction, completion, extension and improvement of its facilities, and the payment, in part, of eighty per centum of the cost of other additions to plant and facilities, of the estimated cost of \$74,474.75, now in progress.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds, from the pleadings and exhibits filed herein:

(1) That, within the period October first, 1918, to November thirtieth, 1919, the applicant actually expended from its treasury, for the construction, completion, extension and improvement of its facilities, the sum of \$51,525.25, none of which was obtained from the issue of stock, bonds, notes or other evidences of indebtedness;

(2) That the applicant now has in process of installation, other additions, extensions and improvements to its plant and facilities, the net cost of which is estimated at the sum of \$74,474.75;

(3) That the issue of applicant's said bonds, of the principal sum of \$100,000.00, is reasonably required and the money to be procured thereby necessary for the partial reimbursement of applicant's treasury for eighty per centum of the aforesaid uncanceled capital expenditures therefrom, and to pay the cost of eighty per centum of the aforesaid additions, extensions and improvements to its facilities;

(4) That, the applicant now having bonds outstanding in excess of its total issued and outstanding capital stock, the

issue of the instant bonds in excess of applicant's outstanding capital stock, and the expenditure of the proceeds of such excess, should be specifically consented to, authorized and approved, and

(5) That, under the present conditions existing in the financial markets and surrounding the sale of securities, it will be extremely difficult to market said bonds for a reasonable price and that, pending a sale thereof, and to enable the applicant to procure the moneys hereinbefore found to be necessary for its lawful purposes, authority should be granted for the pledge of said bonds as collateral security for loans.

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Sandusky Gas and Electric Company be, and hereby it is authorized to issue its first refunding and improvement mortgage, five per cent. bonds, due March first, 1945, of the principal sum of one hundred thousand dollars (\$100,000.00), and that said bonds be sold for the highest price obtainable, but for not less than seventy-seven per centum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That, pending the sale of said bonds, as hereinbefore prescribed, the same may be pledged as collateral security for loans, which loans shall be of the greatest sums negotiable, but in no event less than sixty-five (65) per centum of the par value of the bonds pledged as collateral security therefor, and the moneys so borrowed shall be applied toward the discharge of the purposes hereinafter prescribed for the expenditure of the proceeds of the sale of said bonds. It is further

Ordered, That the issue of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds of such excess, as hereinafter provided, be, and hereby they specifically are consented to, authorized and approved. It is further

Ordered, That the said bonds or the proceeds arising from the sale thereof be devoted to and used for the following purposes, and no others, to wit:

(a) \$20,000.00, principal sum, of said bonds to be delivered to the trustee under said mortgage and, by him let, reserved, with \$20,000.00 additional such bonds now so held, for

the retirement of \$40,000.00, principal sum, of applicant's previously issued bonds;

(b) The proceeds arising from the sale of the remainder, \$80,000.00 principal sum, of said bonds with the proceeds arising from the sale of \$20,000.00, principal sum, of said bonds heretofore reserved for the retirement of outstanding previously issued bonds but, through oversight, disposed of, to be applied toward the reimbursement of applicant's treasury for eighty percentage of the aforesaid expenditure of moneys (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) for capital purposes, and the payment, in part, of eighty per centum of the cost of the additions, extensions and improvements to applicant's facilities now in process of installation. It is further

Ordered, That, if the future checking of the aforesaid expenditures by this Commission shall disclose that the same, or any part thereof, shall have been improperly charged to capital account, an equal amount of such proceeds of said bonds shall be used for the payment of eighty percentum of the cost of other capital additions hereafter provided to applicant's plant and facilities. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

No. 1840—In the Matter of the Application of The Cincinnati Gas and Electric Company for Authority to Issue and Sell \$2,400,000, Face Amount, Six Per Cent. Three Year Secured Gold Notes, and to Pledge \$3,000,000 First and Refunding Mortgage Bonds as Collateral for Said Notes. Prayer Granted.

(Dated December 16, 1919.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Cincinnati Gas and Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission, (1) to issue \$2,400,000.00, principal amount, of six per cent. three year, secured gold notes, dated December first, 1919, to procure funds with which to satisfy, upon the maturity date thereof, viz., March fifteenth, 1920, of applicant's presently outstanding six per cent. collateral gold notes, and (2) to secure the payment of the principal and interest of the

aforesaid secured gold notes by depositing, as collateral security therefor, of \$3,000,000.00, principal sum, of applicant's first and refunding mortgage, five per cent. forty-year sinking fund gold bonds, the issue of which and pledge, pending the sale thereof, was duly consented to and authorized by the orders, made and entered as of date March eighteenth, 1918, in proceedings Nos. 1415 and 1416.

Upon consideration whereof, and being fully advised in the premises, the Commission finds:

That the applicant now has outstanding obligations, represented by \$2,225,000.00 six per cent. collateral gold notes, which mature upon the fifteenth day of March, 1920, and must, on said day, be paid and discharged or lawfully refunded;

That the issue of applicant's said secured gold notes is reasonably required and the money to be procured thereby necessary for the payment and discharge of the applicant's aforesaid lawful obligations, and

That the securing of the aforesaid secured gold notes be the deposit and pledge, as collateral security therefor, of applicant's aforesaid bonds, of the principal sum of \$3,000,000.00 is reasonably required and necessary to enable the applicant to dispose of said notes.

and is satisfied that consent and authority for the issue and disposition of said notes, and the securing of the same by the pledge as collateral security therefor of said bonds, should be granted. It is therefore,

Ordered, That said The Cincinnati Gas and Electric Company be, and hereby it is authorized to issue its three year, six per cent. secured gold notes of the principal sum of two million, four hundred thousand dollars (\$2,400,000.00), and that said notes be sold for the highest price obtainable but not less than ninety-five per centum of the par value thereof, plus accrued interest. It is further

Ordered, That said The Cincinnati Gas and Electric Company be, and hereby it is authorized to secure the payment of the principal and interest of said notes by pledging, as collateral security therefor, \$3,000,000.00, principal sum, of its first and refunding mortgage, five per cent. forty year, sinking fund, gold bonds, the issue and disposition of which was duly consented to and authorized by the orders, made and entered as of date March eighteenth, 1918, in proceedings Nos. 1415 and 1416. It is further

Ordered, That any discount arising from the sale of said notes

be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said notes be devoted to and used for the payment and discharge of applicant's outstanding six per cent. collateral gold notes of the principal sum of \$2,225,000.00, which mature March fifteenth, 1920, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said secured gold notes and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1814—In the Matter of the Application of The Little Miami Railroad Company for Authority to Issue \$265,650.00 Special Guaranteed Four Per Cent. Betterment Stock. Prayer Granted.

(Dated December 19, 1919.)

This day this matter came on for consideration upon the application of The Little Miami Railroad Company, asking the consent and authority of this Commission to issue to The Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company, (the lessee of applicant's property) special guaranteed, four per cent. betterment stock of the par value of \$265,650.00, in payment and discharge, to the extent of the par value of said capital stock, of applicant's indebtedness to the said lessee of its property for and on account of the provision, by the lessee, of net additions thereto in the year 1917 of the gross sum of \$265,638.35 and the unsatisfied balance of a similar account from the previous year of \$34.60, or a total indebtedness of \$265,672.95;

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That the applicant is now indebted to the lessee of its property for and on account of the provisions, by said lessee, of net additions, extensions and improvements to its said property, in the year 1916, \$34.60, and in the year 1917, \$265,838.35, or a total indebtedness of \$265,672.95 as of December thirty-first, 1917, and

(2) That the issue of applicant's said capital stock is reasonably required and necessary for the payment and discharge, or satisfaction, of \$265,650.00 of the aforesaid indebtedness,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is therefore

Ordered, That said The Little Miami Railroad Company be, and hereby it is authorized to issue its special guaranteed four per cent. betterment stock of the par value of two hundred and sixty-five six hundred and fifty dollars (\$265,650.00). It is further

Ordered, That said capital stock be issued as fully paid and non-assessable to The Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company, in satisfaction of \$265,650.00 of the aforesaid \$265,672.95 indebtedness, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of the aforesaid capital stock pursuant to the terms and conditions of this order.

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No. 1734—In the Matter of the Joint Application of Earl Bliss, the Owner of the Electrical Utility at Burton, Ohio, and The Cleveland and Sharon Rapid Transit Railway Company for Authority to Sell and Purchase Such Utility. Prayer Granted.

(Dated November 19, 1919.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of Earl Bliss, the owner and operator of the electric light plant at the village of Burton, Geauga county, Ohio, and The Cleveland and Sharon Rapid Transit Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and approval, by this Commission, of the sale by the said Earl Bliss, and the purchase by said The Cleveland and Sharon Rapid Transit Railway Company of the said electric light plant at Burton, Ohio.

Upon consideration whereof, and being fully advised in the premises, the Commission finds that the convenience of the public will be promoted by such purchase and sale of public utility property and that the public thereby will be furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied

that consent and authority for such purchase and sale of said property should be granted. It is therefore

Ordered, That the said Earl Bliss be, and hereby he is authorized to sell and convey to said The Cleveland and Sharon Rapid Transit Railway Company, all the property and assets of the electric light plant at Burton, Ohio, as more fully enumerated and described in a detailed inventory thereof, which has been filed as an exhibit in this proceeding, which exhibit hereby is made a part of this order by reference; and said The Cleveland and Sharon Rapid Transit Railway Company hereby is authorized to purchase and acquire said property. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicant file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

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No. 1802—In the Matter of the Joint Application of The Chesapeake and Potomac Telephone Company of West Virginia and The Constitution and Dunham Telephone Company. Prayer Granted.

(Dated November 13, 1919.)

This day this matter came on for final consideration upon the joint application of The Chesapeake and Potomac Telephone Company of West Virginia, (a corporation duly organized and existing under and by virtue of the laws of West Virginia, and duly authorized to do business in the State of Ohio), and The Constitution and Dunham Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio and engaged in operating a telephone system in Washington county, Ohio), asking the consent to and approval by this Commission, of the making, by said applicants, of a certain contract or articles of agreement providing, among other things and in chief, for the retention of the

physical connection now existing between their respective systems, and the continued interchange of toll business.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by the retention of said physical connection and the continued interchange of toll business by the applicant and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for the retention of said physical connection and the continued interchange of toll business by the applicant should be granted. It is, therefore,

Ordered, That said The Chesapeake and Potomac Telephone Company of West Virginia and said The Constitution and Dunham Telephone Company be, and hereby they are authorized to retain the physical connection now existing between their respective systems and to continue to interchange toll business, as provided by law. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving said matters.

ATTORNEY GENERAL

Publishers of Text Books Cannot Charge More than the Ohio Contract Price on File with the State School Book Commission for Books Regularly Adopted—When Books for Use in Public Schools are Regularly Adopted by a Board of Education, Such Adoption is for a Period of Five Years, and the Board of Education is Entitled, During Such Period, to the Benefit of the Price of Such Text Book as Filed by the Publisher with the School Commission—There is but one Method for the Legal Adoption of Books for Use in the Public Schools and that is the Method Provided in Section 4752, General Code. The Statutes do not Recognize an Adoption of a School Book for Supplementary or Reference Purposes as Against an Adoption for School Use.

No. 786—(Opinion Dated November 15, 1919).

Hon. F. B. Pearson, Superintendent of Public Instruction, Columbus, Ohio.

Dear Sir: Acknowledgment is made of your request for an opinion of the attorney general upon the following questions:

“(1) Have publishers the right to charge more than the Ohio contract price for books regularly adopted, but used for supplementary and reference purposes for a period of five years?

(2) Have publishers the right to charge more than the Ohio contract price for books regularly adopted, but used for supplementary and reference purposes, when no time period of adoption is specified, but the matter is left open?

(3) What constitutes a legal adoption of books for supplementary and reference purposes so that publishers may be required to furnish such books at the Ohio contract price?”

The statutes covering the establishment of the state school book commission and fixing the manner and method of filing text books by publishers, for the purpose of adoption later by school boards throughout the state, are Sections 7709-7715, inclusive, G. C.

Your first question is whether publishers of text books have the right to charge more than the Ohio contract price for books regularly adopted but used for supplementary and reference pur-

poses for a period of five years. The answer to this question is in the negative, for if a publisher had agreed in writing to furnish books that were adopted by a school board and did not do so, such publisher would be violating the provisions of Section 7712, G. C., which provides that under circumstances where a publisher fails or refuses to furnish books that have been adopted, the board of education which has been refused must at once notify the state school book commission of such failure or refusal and if it is found that there has been a failure or refusal, the state school book commission shall at once notify such publisher and each board of education in the state that such book shall not thereafter be adopted and purchased by boards of education in this state. In addition, the section provides that the publisher shall forfeit and pay to the state five hundred dollars for each failure to furnish books that have been adopted by a board of education at the prices agreed upon at the time of contract, such prices being not in excess of those filed with the state school book commission in the office of the superintendent of public instruction at Columbus.

It is therefore apparent that publishers have no right to charge more than the price listed with the state school book commission to any board of education which adopts such text book or text books. The law does not recognize any distinction as to what constitutes supplementary and reference purposes in the use of a text book. The only reference in the law is to text books and Webster defines text books as

"A volume, as of some classical author, on which a teacher lectures or comments; hence any manual of instruction; an educational treatise; a school book."

The Century Dictionary defines a text book as

"A book used by students as a standard work for a particular branch of study."

It would seem, therefore, that if the books have been regularly adopted in the manner provided in Section 4752, G. C., the question as to the way in which they were to be used in class work, whether with each recitation or intermittently, does not enter. Where a publisher has listed a book with the state school book commission and such book has been later adopted by a board of education, the publisher must furnish such book at a price not exceeding the maximum price filed with the text book commission at the time of purchase.

Coming to your second question, you ask whether publishers have the right to charge more than the Ohio contract price for books regularly adopted but used for supplementary and reference purposes, when no time period of adoption is specified but the matter is left open. You indicate in this question that the books you have in mind have been regularly adopted by a board of education, but that no time period of adoption is specified and the matter is left open.

There is but one method of legal adoption of books in Ohio, which is that provided for in Section 4752, G. C., which reads:

"* * * Upon a motion to adopt a resolution * * * to adopt any text book, the clerk of the board shall publicly call the roll of the members composing the board and enter on the records the names of those voting 'aye' and the names of those voting 'no.' If a majority of all of the board vote aye, the president shall declare the motion carried."

Section 7713, G. C., reads:

"At a regular meeting, held between the first Monday in February and the first Monday in August, each board of education shall determine by a majority vote of all members elected the studies to be pursued and which of such text-books so filed shall be used in the schools under their control. But no text-books now in use or hereafter adopted shall be changed, nor any part thereof altered or revised, nor any other text-book be substituted therefor for five years after the date of the selection and adoption thereof, as shown by the official records of such board, except by the consent at a regular meeting, of five-sixths of all members elected thereto. Books so substituted shall be adopted for the full term of five years."

From a reading of the above section, it is noted that a regular adoption operates for the full term of five years and there cannot be, under the provisions of Section 7713, G. C., a regular adoption in which the time period could be stated as less.

Coming to your third question, you desire to know what constitutes a legal adoption for supplementary and reference purposes, so that publishers may be required to furnish such books at the Ohio contract price.

The statutes creating the state school book commission of Ohio, consisting of the governor, the secretary of state and the superintendent of public instruction, do not recognize a distinction between books used strictly as text books and those which you indicate may be books for supplementary and reference purposes.

Throughout the section the word "text book" occurs, but in more frequent instances it is simply the word "books." It is important to notice that there is a distinction between the work conferred on the state school book commission, as regards this act, and the duty that is later conferred on boards of education under such act. The state school book commission created in Section 7710, G. C., does not adopt anything. Its power is limited by the language of the statute in these words:

"* * * shall fix the maximum price at which such books may be sold to or purchased by boards of education, as hereinafter provided. * * *"

Following the fixing of such maximum price, the publisher "notifies the superintendent in writing that he accepts the price fixed, and agrees in writing to furnish such book during a period of five years at that price, such written acceptance and agreement shall entitle the publisher to offer the book so filed for sale to such boards of education."

A reading of the statutes in question indicates that before any board of education can legally demand that books be furnished to such board, at the price filed with the state school book commission, the board itself has a duty to perform—that is, adopting such book for use in its district. Thus we have the following excerpts from the statutes, indicating that an adoption is contemplated in order to have the benefits of the law:

"Sec. 7709. * * * before such books may be lawfully adopted and purchased by any school board. * * *"

"Sec. 7711. * * * A board of education shall not adopt or caused to be used * * *"

"Sec. 7712. If a publisher * * * fails or refuses to furnish such books adopted as herein provided to any board of education * * * such books shall not thereafter be adopted and purchased by boards of education. * * *"

"Sec. 7713. * * * which of such text-books so filed shall be used * * * no text books now in use or hereafter adopted * * * (and again) for five years after the date of the selection and adoption thereof, as shown by the official records of such boards, * * *"

"Sec. 7716. When pupils remove from any district, and have text-books of the kind adopted in such district and not the kind adopted in this district to which they remove. * * *"

It will thus be seen that there is contemplated by the law an adoption prior to the purchase, and that such adoption shall be had by the board of education which desires to avail itself of the

price fixed by the state school book commission. As indicated heretofore, there is but one section of the statutes which bears upon the manner of adopting a text book, that appearing in Section 4752, G. C., *supra*.

By Section 7710, G. C., the state commission fixes the maximum price at which such books may be sold to or purchased by boards of education "as hereinafter provided," and the maximum price thus fixed for purchases by the board of education is only for purchases "as hereinafter provided." The method "hereinafter provided" occurs in Section 7713, G. C., *supra*, and these two sections jointly provide for obtaining the contract price on the basis of the publisher agreeing to furnish (Section 7710) "during a period of five years at that price" and (Section 7713) for the reciprocal consideration of the board of education adopting a book for five years, with the possible exception of substitution at a regular meeting by five-sixths of all the members elected to the board, and as to this exception it may be mentioned that practically all the school boards of Ohio are now what are known as small school boards, so that five-sixths of any board is substantially requirement for a unanimous vote to change the books in question and the corresponding security, in practice, to the publisher of a full five-year contract. It will be noted that while the publisher is bound under the section heretofore quoted to furnish the books for a period of five years at the price contracted for which may not exceed the maximum price fixed by the state commission, at the same time the board of education can abrogate the contract any time during the five years by a five-sixth vote of its members.

It thus will be seen that this statute is in the interest of the public, but a one-sided or unfair interpretation cannot be given to it.

There is a distinction between the adoption of a text book as contemplated in the statutes and the approval of such book for use in public schools. A book might be approved for use upon the recommendation of the superintendent or on the report of a committee of the board of education, but this would not be an adoption in the sense that is mentioned in Section 4752, *supra*, because the board of education could approve the use of such book and not be bound for any specific time, while if the same was adopted, under the language of the statutes such adoption would hold for five years, unless during such five years the book in question was sup-

planted by another book upon a five-sixths vote of the board of education, counting all its members.

It would seem, therefore, that a board of education which had adopted a text book that was listed with the state school book commission in the manner provided by the text book law would be entitled to the benefits of the prices filed with such commission, such prices being filed by the publishers as being effective to such boards of education as adopt the text book or text books in the manner provided by law.

On the other hand, a board of education which had merely approved the use of a certain book could hardly demand the full rights of a board of education that had adopted the book for a period of five years, for the former board of education would be presenting little consideration to the publishers, in return for the price quoted and filed with the state school book commission.

The law contemplates that the board shall do certain things for the publisher in order that he may know what supplies to purchase, that the books may not be required to be furnished at a loss to the publisher.

The requirements of Section 4752, G. C., as to the manner of adopting a text book, are mandatory and should be strictly followed. Bearing upon the language of this section, which language formerly occurred in Section 3982, R. S., the Supreme Court of Ohio spoke as follows:

"The authority of boards of education like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising the power vested in them are resolved against them."

Board of Education v. Best, 52 O. S., 152.

As far as can be ascertained, the courts of this state have never had any occasion to pass upon the direct question as to what was a text book for "supplementary use," but in the state of Michigan, where school books are required to be listed in practically the same manner as in Ohio, the following language is pertinent as bearing upon the question at hand:

"A resolution of a board of education to purchase certain text books for 'supplementary use' in the schools shows that there is no intention of adopting the books within the sense of the statute and the purchase is illegal and void. * * * The language of the statute is 'adopt.' Books are adopted when

such action as the statute provides is taken * * * the sole authority for purchases for supplementary use is in this statute relative to adoption."

Attorney General ex rel. v. Board of Education of Detroit, 133 Mich.. 681.

It would seem that the publisher would be glad to furnish books at the regular Ohio contract price, provided he has a regular adoption of his book in the manner prescribed by the Ohio statutes, for the consideration moving him for having submitted the reduced price to the state school book commission is the practical certainty of a five-year contract which enables him to purchase his supplies and gauge his requirements with some degree of accuracy.

Even though a book is adopted by a board of education, such adoption does not carry with it a purchase, for the purchase must follow adoption to secure the price filed with the school book commission. The publisher runs the risk of selling many or few of the text books in question in a particular district, even after adoption, though in a general sense adoption usually means that there will be purchases to follow.

If a board of education, by merely approving a book or by acquiescence permitting it to be used in the schools of the district, demanded as its right the price filed by the publisher with the school book commission, it would be demanding something for which it had not given, in the eyes of the statute, anything in return, or at least that which is contemplated—that is, the adoption, in legal manner, of the book in question.

Where a board of education complies with the statute in adopting a book, it is clearly entitled to the benefit of the text book law, but another board of education which declines to adopt, but yet merely desired to use intermittently, would hardly be in a position to demand the same consideration as the board of education which had complied with the statutes in carrying out its part of the statute in adopting in the manner provided by law.

The statutes providing for the filing by the publisher, with the state school book commission, of his maximum price also obligate the publisher to sell at the lowest price for five years, notwithstanding changes in conditions and greatly increased costs due to abnormal conditions, not anticipated at the time such price was filed, and such statutes obligate the board of education to make such sales possible at the lowest price by practical assurance to

the publisher that a book regularly adopted will be used for five years and that the publisher will not be cut off short of that period. Yet this latter can occur by a five-sixths vote of the board of education.

The protection to the publisher contemplated in this act is that part of the statute which provides for an adoption in a legal way of the book which he has submitted to the school book commission for use within the state. A mere occasional purchase of a book from the publisher by a board of education, which may not result in any further purchase at all, is not the protection to the publisher which the statute contemplates. If a board of education chooses to depart from the statutory method of purchasing books prescribed by the legislature for its use—that is, by adoption (Section 4752, G. C.) and purchase—then they have little right to expect the benefits of the contract price obtainable through compliance with the statute.

In answer to your questions, therefore, it is the opinion of the attorney general that:

1. Publishers of text books cannot charge more than the Ohio contract price on file with the state school book commission for books regularly adopted.

2. When books for use in public schools are regularly adopted by a board of education, such adoption is for a period of five years, and the board of education is entitled, during such period, to the benefit of the price of such text book as filed by the publisher with the school book commission.

3. There is but one method for the legal adoption of books for use in the public schools and that is the method provided in Section 4752, G. C. The statutes do not recognize an adoption of a school book for supplementary or reference purposes as against an adoption for school use.

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A Two-thirds Majority of all the Ballots Cast at an Election on the Question of Building or Enlarging a Town Hall, at a Greater Cost Than \$2000.00 is Not Necessary to Carry Such an Election.

No. 861—(Opinion Dated December 9, 1919.)

Hon. George W. Sheppard, Prosecuting Attorney, Portsmouth, O.

Dear Sir: Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

‘When a township hall is to be constructed at a greater

cost than \$2000, and the proposition of constructing such hall at a greater cost than \$2000 is submitted to a vote of the people of the township, is a majority vote sufficient to authorize the trustees to issue bonds of the township for the purpose of constructing said hall or does it require a two-thirds vote?"

Sections 3260, 3395 and 3396 General Code are pertinent to your inquiry.

Section 3260 authorizes the township trustees to purchase a site and erect thereon a town hall "if a majority of the electors of the township * * * voting at a general election vote in favor thereof." Under this section the cost of such hall may not exceed two thousand dollars.

Section 3395 authorizes the erection of a town hall, at a greater cost than is otherwise allowed by law, "upon submission of the question of the erection of such hall to the electors of the township.

Section 3396 further provides the manner of submission of such question and provides:

"If a majority of all the votes cast at the election are in the affirmative, the trustees shall levy the necessary tax."

The language used in this section leaves no doubt as to what quantity of ballots the affirmative ballots are to be compared with, viz., "all the ballots cast." This does not require a two-thirds majority.

It is possible that this section has been confused with section 3402 in the same chapter, which reads:

"If at such election two-thirds of the electors of the township and of the village voting, vote in favor of such improvement, the trustees of such township and the council of the village shall jointly take such action as is necessary to carry out such improvement."

This section, however, relates to the point improvement provided for in section 3399 and not to the election referred to in section 3396 (*supra*). It rather emphasizes the lack of a necessity for a two-thirds majority in section 3396, both from its position in the chapter and the later enactment of 3402, as well as the different language employed in the two sections.

You are therefore advised that it is the opinion of the attorney general that a two-thirds majority of all the ballots cast at an election, on the question of building or enlarging a town hall, at a greater cost than \$2,000, is not necessary to carry such election.

County and District Superintendents of Schools are not Entitled to Pay for Attending the County Teachers Institute.

No. 762—(Opinion Dated November 7, 1919.)

Hon. Frank B. Pearson, Superintendent of Public Instruction, Columbus, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

"Are county and district superintendents entitled to pay for attending a county teachers' institute?"

Section 7870, G. C., reads as follows:

"When a teachers' institute has been authorized by the county board of education the boards of education of all school districts shall pay the teachers and superintendents of their respective districts their regular salary for the week they attend the institute upon the teachers or superintendents presenting certificate of full regular daily attendance, signed by the county superintendent. If the institute is held when the public schools are not in session, such teachers or superintendents shall be paid two dollars a day for actual daily attendance as certified by the county superintendent, for not more than five days of actual attendance, to be paid as an addition to the first month's salary after the institute, by the board of education by which such teacher or superintendent is then employed. In case he or she is unemployed at the time of the institute, such salary shall be paid by the board of education next employing such teacher or superintendent, if the term of employment begins within three months after the institute closes."

Relative to the question of a district superintendent being entitled to the additional compensation of \$2.00 per day mentioned in Section 7870, G. C., the attorney general in 1915 passed upon this question in opinion 749, appearing at page 1531, Vol. 2, 1915, the syllabus of which reads:

"A district superintendent is not entitled to pay for attending a teachers' institute under authority of Section 7870, G. C., as amended in 104 O. L., 107."

It is advised that Section 7870, G. C., has not been amended since 1915 by any subsequent legislation upon this particular subject and the law at present reads the same as it did at the time it was construed by the attorney general in 1915. The attorney general arrived at his conclusion in such opinion upon the ground that,

"While the provisions of said statute are general in that they apply to a teacher or superintendent employed by the board of education of any school district in the county, it will be observed that such teacher or superintendent must be employed by such board of education within the meaning of said provisions of such statute in order to be entitled to pay for attending said institute."

It seems, therefore, that it was not the intention of the legislature, in amending said section (7870) to extend the meaning of said provision so as to include district superintendents." The present attorney general concurs in the opinion above given and for the reasons appearing therein.

Coming to the question as to whether the county superintendent is entitled to pay for attending the county teachers' institute, attention is invited to the fact that he is employed by the year starting on August 1st and running for a period of twelve months thereafter. In Opinion No. 104, issued by the attorney general on March 8, 1919, such annual salary as appearing in the contract of the county superintendent should be paid in twelve equal installments and therefore the county superintendent would be drawing his regular salary for attendance at the county teachers' institute, no matter what part or time of the year such institute might be held. Again, the question arises as to whether the management of a county teachers' institute, the expenses of which are paid by the county board of education, is not one of the duties of the county superintendent in the capacity for which he is employed. It will be noted that Section 7870, supra, says that the daily attendance of the teachers and superintendents at the county teachers' institute "shall be paid * * * as certified by the county superintendent * * *," which would indicate that before such county superintendent could certify any teacher or superintendent as being present at such institute, he would be there personally himself in order to certify the daily attendance of others. The section in question seems to contemplate the payment of \$10.00 as maintenance for teachers and superintendent who might not be on the salary roll at a time when the teachers' institute is held, in which event, if they desire to attend such institute, they would be compelled to pay from their own funds maintenance in attending a county teachers' institute at a time when they themselves were not on the pay roll; for in the majority of cases the teachers are paid for their work at the end of each school month,

beginning with the school month of September, and when the school term has ended with its last month, they have under contract with the board of education received their last month's salary, in which event, during the months prior to September, that is to say, the summer months in which the institute might be held, they are not on the pay roll of any board of education at that particular time.

The intention of the law seems to be to encourage attendance at the teachers' institutes and it has thus provided that those persons who are not being paid during the summer months shall receive this additional compensation of \$10.00, that is, five days' attendance at \$2.00 per day, from the next employing board of education, to be paid as an addition to the first month's salary by the employing board. This condition does not seem to apply in the case of a county superintendent of schools who receives his annual salary in twelve equal installments, to be paid throughout all of the months of the calendar year, nor does it apply, it may be said, in the case of a district superintendent who should be paid in the same manner, these two employees being paid as indicated above for their time throughout the entire calendar year of twelve months.

It is therefore the opinion of the attorney general that county and district superintendents are not entitled to pay for attending the county teachers' institutes.

SECRETARY OF STATE

NEW CORPORATIONS.

Weldware Mfg. Co., Cleveland; \$100,000. A. E. Cornell, L. E. Giel, George O. Willett, E. M. Kossin, Ralph Blue.

Peerless Printing Co., Cincinnati; \$10,000. Nathan Silverblatt, William Ingram, H. C. Menefee, Mary E. McCune, Elizabeth Wilson.

Standard Savings Bank, Akron; \$100,000. W. T. Akers, F. F. Allen, Fred W. Sweet, J. A. Faller, Robert P. Hassler.

Royal Blue Transit Line Co., Magnolia; \$100,000. A. W. McCarty, Louis E. Leichtamer, Maude M. Gibley, Cora H. Kintz, Edward W. Stevens.

Chapman Machinery Co., Mt. Vernon, \$300,000. W. B. Chapman, W. R. Culbertson, Zenne E. Taylor, F. R. Thomas, B. E. Williams.

Maple Baking Co., Toledo; \$40,000. John L. Gorny, Leo M. Fox, Edward Menke Jr., Joseph S. Gorny, William J. Fritsche.

Marion Stone Co., Marion; \$100,000. C. E. Merkel, M. J. Morral, Joseph D. Cuthery, John Baldaur, Fred E. Guthery.

Fletcher Cartage & Storage Co., Sandusky; \$15,000. Frank B. Fletcher, Charles H. Smith, Harry A. Fletcher, Joseph G. Pyle, A. K. Nier.

Ohio Cabinet Co., Hicksville; \$10,000. G. A. Gebhard, C. E. McFadden, E. C. Trip, John S. Patterson, Charles Abell.

Gorny Co., Toledo; \$10,000. John L. Gorny, Mary Chisholm, William J. Fritsche, Mace M. Murphy, Elmer L. Skidmore.

Morse-Rogers Steel Co., Cleveland; \$100,000. F. H. Morse, H. V. Morse, C. B. Bayly, Clinton DeWitt, Charles D. Simmons.

W. H. Light Co., Cleveland; \$1000. W. H. Light, F. G. Pritschau, R. B. Morgan, M. M. Broomhead, Charles S. Wachner.

De Luxe Auto Body & Top Co., Cleveland, \$15,000. A. M. Kelley, M. S. Bernhardt, O. A. Byrne, A. J. Roth, M. A. McCormack.

Solar Products Co., Cleveland, \$30,000. W. F. Legg, C. A. Legg, P. T. Webster, L. R. Canfield, H. E. Mount.

Dayton Armature and Stator, Dayton, \$10,000. Arthur L. Wetz, Clyde R. F. Frampton, Russell M. Frampton, L. N. Westfall, Grace W. Westfall.

Cleveland-Akron Speedway Co., Cleveland, \$10,000. R. K. Pelton, A. N. Dietz, F. M. Barton, J. L. Vaughan, W. C. Clark.

The Bellevue Improvement Co., Bellevue, \$10,000. J. E. Wise, Allan G. Aigler, W. C. Raish, Fred W. Mitchell, George J. Burgess.

Ford-McCaslin Co., Cleveland, \$2,500. Cyrus Clark Ford, W. T. Hudson, Horatio Ford, Robert E. Roehm, N. I. Young.

Crowell-Lundoff-Little-Bicknell Co., Cleveland, \$500,000. Bascom Little, C. W. Lundoff, Warren Bicknell, Orville Smith, Charles Follett.

Gnaden-Goshen Coal Co., Columbus, \$300,000. S. R. Yoacum, L. C. Schaffer, George L. Stephenson, W. J. Eckart, Fred Anthony.

W. F. Gammeter Co., Cadiz, \$100,000. W. F. Gammeter, A. H. Commins, Amos G. Engleback, C. Blake McDowell, Edwin W. Brouse.

DeKlyn Candy Co. Cleveland, \$50,000. S. W. Duffie, H. B. Rigby, John Q. DeKlyn, Charles F. DeKlyn, E. R. Upsom.

Expert Cleaning and Dyeing, Columbus, \$20,000. Benj. Finkelstein, David Pastor, Joseph Pastor, Sarah Foreman, L. W. Josephson.

Dixie Transport Co., Toledo, \$25,000. Carl A. Miller, N. B. Bowman, H. B. Bowman, W. F. Bowman, A. H. Bowman.

A. E. Russ Twist Drill Co., Madison, \$157,000. A. E. Russ, A. E. Russ, Jr., R. W. Cornwell, C. K. Russ, E. C. Russ.

Xi Deuteron Building Association, Cleveland, \$10,000. Mark A. Copeland, George A. Mowerry, N. B. Madison, O. E. Schultz, M. E. Getchell.

Ohio Sanitarium Co., Columbus, \$90,000. Earl E. Gaver, Edw. G. Thoman, Joseph F. Hays, Will J. Hays, Amelia P. McKibben.

The Buckeye Lodge Building Co., Youngstown; \$10,000. Thaddeus Young, Joseph F. Harris, Charles L. Berry, George Rideout, Henry V. Walker, Thomas E. Robinson, James N. Stewart.

Economy Appliance Co., Cleveland, \$30,000. Samuel I. Rice, Olin J. Fulton, Roy E. Shellings, R. C. Scheibly, Fred F. Truklar.

New Way Laboratories Co., Wapakoneta, \$300,000. Oscar A. Stuhldreher, John F. Faust, Samuel Floyd, Corwin Hamilton, R. T. Copeland.

Industrial Securities Co., Cleveland, \$10,000. Henry H. Hoppe, Elizabeth Baldwin, Helen Scœnberger, Sara Petty, William M. Carter.

Chateau Co., Cincinnati, \$100,000. Anthony B. Dunlap, Stephen R. Hollen, John C. McCarthy, Daisy Wohlwender.

Oulja Oil & Gas Co., Toronto, \$25,000. Charles S. Kelly, Louis P. Putt, Frank Letzkus, Hugh J. Doran, Harry P. Boyer.

Grafton Realty Co., Grafton, \$25,000. C. A. Bennett, C. W. Holder, Harley C. Stevick, W. J. Harder, Frank W. Cousins.

Clamar Co., Cleveland, \$50,000. C. A. Alexander, K. T. Siddall, Y. M. Dye, J. H. Schultz, P. H. Keough.

First Commercial Corporation Co., Cleveland, \$250,000. S. A. Titus, F. J. Kowalczyk, J. K. Lukaszewski, W. J. Cjoromamski, Andrzej Turajki.

Kempton Coal Co., Cleveland, \$25,000. W. J. Zoul, John T. Curry, F. C. Johns, L. C. Misch, C. H. Dittoe.

Sidney Trading Co., Sidney, \$852,000. L. M. Studevant, E. H. Farrell, Andrew J. Hess, J. B. Troester, Renyon G. Hess.

Hoyt Bros. China Co., East Liverpool, \$501,000. William B. Hoyt, Don M. Hoyt, John W. Cain, Jessie P. Hoyt, Edith E. Hoyt.

State Iron & Metals Co., Canton, \$60,000. Louis H. Kaven, David Levin, Benjamin N. Berkman, Jacob Piper, John R. Poyser.

Econ Oil & Gas Co., Lima, \$25,000. H. N. Piper, A. J. Mueller, M. B. Mueller, F. E. Piper, B. I. Reeves.

Big Walnut Auto Sales Co., Gahanna, \$25,000. F. E. Hosiman, L. F. Ealy, R. E. Dawson, Robert Augspurger, W. W. Fisher.

Eaton Axle Co., Cleveland, \$3,000,000. J. O. Eaton, S. H. Tolles, W. T. Kinder, James P. Wood, R. C. Hyatt.

Weston Realty Co., Cleveland, \$10,000. H. D. Koblitz, William M. Cohen, M. Y. Anderson, H. Holbom, Albert Koblitz.

Reliable Dry Goods Co., Cleveland, \$5,000. A. L. Metz, M. E. Blum, A. H. Goldman, A. Kreczi, S. A. Thurman.

Increases

National Furniture Co., Cleveland, \$15,000 to \$50,000.

Drury Printing Co., Dayton, \$15,000 to \$30,000.

R. & M. Co., Dayton, Dayton, \$10,000 to \$50,000.

Burger Iron Co., Akron, \$500,000 to \$1,000,000.

Cleveland Machine & Stamping Co., Cleveland, \$10,000 to \$100,000.

Lake County Masonic Building Co., Painesville, \$10,000 to \$100,000.

Oppenheim-Collins Co., Cleveland, \$175,000 to \$675,000.

Electric Smelting & Aluminum Co., Cleveland, \$10,000 to \$450,000.

American Artificial Limb Co., Cincinnati, \$15,000 to \$50,000.

Starlight Realty & Investment Co., Cleveland, \$10,000 to \$50,000.

Ben Franklin Printing Co., Akron, \$25,000 to \$100,000.

Hoover-Roush Co., Lima, \$15,000 to \$85,000.

Bissinger Magneto Co., Cleveland, \$50,000 to \$100,000.

Abbott Realty Co., Cleveland, \$150,000 to \$175,000.

Western Appraisal Co., Cincinnati, \$25,000 to \$50,000.

Carroll Engineering Co., Dayton, \$100,000 to \$300,000.

Danis-Hunt Construction Co., Dayton, \$50,000 to \$250,000.

Kelly-Reamer Co., Cleveland, \$30,000 to \$60,000.

Chester Realty Co., Cleveland, \$80,000 to \$90,000.

E. C. Shauaker Co., Toledo, \$100,000 to \$150,000.

Auditorium Amusement Co., Dayton, \$10,000 to \$25,000.

Cleveland Clay Products Co., Cleveland, \$10,000 to \$25,000.

Acme Provision Co., New Philadelphia, \$25,000 to \$50,000.

Whitaker Paper Co., Cincinnati, \$2,500,000 to \$5,000,000.

Dime Savings Bank Co., Canton, \$200,000 to \$500,000.

Bixler Coal Co., Columbus, \$75,000 to \$200,000.

Decrease

Fifth Avenue Realty Co., Cincinnati, \$20,000 to \$500,000.

Haskell Realty Co., Toledo, \$20,000 to \$18,000.

PUBLIC UTILITIES COMMISSION

No. 1846—In the Matter of the Application of The Lake Erie Light and Power Company for Authority to Issue \$10,000.00 Common Capital Stock. Prayer Granted.

(Dated December 29, 1919)

This day this matter came on for consideration upon the application of The Lake Erie Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio, and the owner and operator of a utility furnishing electrical service to consumers thereof at Geneva-on-the-Lake, Ohio), asking the consent and authority of this Commission to issue common capital stock of the par value of ten thousand dollars, the proceeds thereof to be used to pay the cost of providing material and supplies and constructing applicant's distributing system:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon:

(1) That, between the dates May 1, and December 12, 1919, the applicant had purchased and installed material incident to its distributing plant, at a total cost of \$6,490.32;

(2) That the applicant now has in contemplation certain additions, extensions and improvements to its facilities, the cost of which has been estimated at the sum of \$2,600.00, and,

(3) That the issue of applicant's common capital stock of the par value of \$9,100.00 is reasonably required, and the money to be procured thereby necessary for the payment and discharge of its obligations, incurred and to be incurred, for and on account of the construction, completion, extension and improvement of its facilities as aforesaid.

and is satisfied that consent and authority for the issue and disposition of applicant's said common capital stock of the par value of \$9,100.00 should be granted. It is therefore,

Ordered, That said The Lake Erie Light and Power Company be, and hereby it is authorized to issue its common capital stock

of the par value of nine thousand, one hundred dollars (\$9,100.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said common capital stock be devoted to and used for the following purposes, and no others, to wit: (a) The payment and discharge of applicant's indebtedness, of the sum of \$6,490.32, incurred for and on account of the purchase of material and the construction of its system between the dates May first and December twelfth, 1919, and (b) the provision of additions, extensions and improvements to its said system, the cost of which has been estimated at the sum of \$2,600.00. It is further

Ordered, That the applicant make verified report to this Commission semiannually, within fifteen days after the close of each calendar, semiannual periods of the issue and disposition of its said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority to issue additional capital stock of the par value of nine hundred dollars be, and hereby it is dismissed.

3

No. 1857—In the Matter of the Application of The Massillon Electric and Gas Company, a Corporation, for Authority to Issue Bonds and Notes.

(Dated December 29, 1919)

This day this matter came on for consideration upon the application of The Massillon Electric and Gas Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue, (1) first mortgage, sinking fund, five per cent. bonds, due 1956, of the principal sum of \$314,000.00 to procure moneys with which to reimburse its treasury for uncapitalized capital expenditures therefrom, and (2) three-year, seven per cent. collateral trust notes, (secured by a pledge of \$300,000.00, principal sum of said bonds) of the principal sum of \$200,000.00, to provide for an immediate partial reimbursement of its treasury for the aforesaid expenditures:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said ap-

plication and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon:

(1) That, within the period June 1, 1916 and November 30, 1919, both inclusive, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$369,739.10, none of which was obtained or secured by the issue of stock, bonds, notes or other evidences of indebtedness, and eighty-five per centum of which may be bonded under the provisions of applicant's said first mortgage;

(2) That the issue of applicant's said first mortgage bonds of the principal sum of \$314,000.00 is reasonably required, and the money to be procured thereby necessary for the reimbursement of applicant's treasury for eighty-five per centum of the aforesaid uncapitalized capital expenditures therefrom;

(3) That, under the conditions now obtaining in the financial markets and surrounding the sale of securities, it will be exceedingly difficult, if not impossible, to dispose of said bonds at a reasonable price, and that, to obtain a portion of the moneys hereinbefore found to be necessary and required for the lawful purposes of said applicant, that the issue of applicant's said notes, of the principal sum of \$200,000.00, and the money to be secured thereby, also are reasonably required and necessary for applicant's said purposes, and

(4) That the applicant now having outstanding capital stocks of the par value of \$750,000.00 and bonds of the principal sum of \$523,000.00, that the issue of \$97,000.00, principal sum of said bonds and all of said notes in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds of such excess of bonds and notes should be specifically consented to, authorized and approved.

and is satisfied that consent and authority for the issue and disposition of said bonds and notes should be granted. It is, therefore,

Ordered, That said The Massillon Electric and Gas Company be, and hereby it is authorized to issue its first mortgage, sinking fund, five per cent. bonds, due 1956, of the principal sum of three hundred and fourteen thousand dollars (\$314,000.00), and that said bonds be sold for the highest price obtainable, but not less than eighty per centum of the par value thereof. It is further

Ordered, That, pending such sale of said bonds, said The Massillon Electric and Gas Company be, and hereby it is authorized to

pledge said bonds as collateral security for loans, which shall be of the greatest sums negotiable, but in no event less than sixty-six and two-thirds percentum of the par value of said bonds, and, to consummate such pledge of a part of said bonds, to make and issue its three-year, seven per cent. Collateral Trust Notes of the principal sum of two hundred thousand dollars (\$200,000.00), dated January first, 1920, and to be secured by a pledge of applicant's aforesaid bonds of the principal sum of three hundred thousand dollars, which notes shall be sold for the highest price obtainable, but not less than ninety percentum of the par value thereof, but to be "tax refund" under the Pennsylvania four-mill state tax, and free from the normal Federal Income Tax, not to exceed two per cent., and to be convertible, at the option of the holders thereof, up to within sixty days of the maturity date thereof, into the aforesaid first mortgage bonds of the applicant on the basis of par for said notes and not less than eighty-two percentum, net, of said bonds, plus accrued interest. It is further

Ordered, That the discounts arising from the sale of said notes and the sale or conversion of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the issue of all of said notes and \$97,000.00, principal sum, of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds of such excess, as hereinafter prescribed, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said bonds shall be devoted to and used for the following purpose, and no other, to wit: The reimbursement, to the extent of such proceeds, of applicant's treasury for eighty-five percentum of the aforesaid sum of \$369,739.10, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, for capital purposes, between the dates June first, 1916 and November thirtieth, 1919, as aforesaid; or, the proceeds arising from the sale of said notes used for the partial adjustment of said reimbursement and the necessary portion of the proceeds of said bonds, when and as the same may hereafter be sold, used for the discharge of said notes. It is further

Ordered, That the applicant make verified report of the issue and disposition of said bonds and notes and the expenditure of the proceeds thereof as hereinbefore provided.

No. 1841—In the Matter of the Application of The Trumbull Public Service Company for Authority to Have Certified, Issued and Delivered to it Upon its Order, \$353,000.00 Face Value of Three Year, Seven Per Cent. Mortgage Notes. Prayer Granted.

(Dated December 26, 1919)

This day this matter came on for consideration upon the application of The Trumbull Public Service Company, (a corporation duly organized and existing under the laws of Ohio), asking the consent and authority of the Commission to issue three year, seven per cent. mortgage notes of the principal sum of three hundred and fifty-three thousand dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of applicant's treasury for eighty-five percentum of the moneys not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom between the dates November first, 1918 and November thirtieth, 1919, for capital purposes:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon:

(1) That, between the dates November 1, 1918 and November 30, 1919, the applicant actually expended from its treasury for the acquisition of property and the construction, completion, extension and improvement of its facilities, the sum of \$415,648.58, none of which was procured or obtained by the issue of stock, bonds, notes or other evidences of indebtedness;

(2) That the issues of applicant's said notes is reasonably required and the money to be procured thereby necessary for the reimbursement of applicant's treasury for the afore-said uncapitalized capital expenditures, and

(3) That the applicant now having notes and bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue of the said notes in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds of such excess should be specifically consented to, authorized and approved.

and is satisfied that consent and authority for the issue and disposition of said notes should be granted. It is, therefore,

Ordered, That said The Trumbull Public Service Company be,

and hereby it is authorized to issue its three-year, seven per cent. mortgage notes of the principal sum of three hundred and fifty-three thousand dollars (\$353,000.00), and that said notes be sold for the highest price obtainable but not less than ninety percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said notes be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the issue of applicant's said notes in excess of its issued and outstanding capital stock and the expenditure of the proceeds of such excess, as hereinafter prescribed, be, and hereby they are specifically consented to, authorized and approved. It is further,

Ordered, That the proceeds arising from the sale of said notes be devoted to and used for the following purpose, and no other, to wit: The reimbursement, in part and to the extent of said proceeds, of applicant's treasury for eighty-five percentum of the sum of \$415,648.58, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, between November first, 1918 and November thirtieth, 1919, for the construction of additions, extensions and improvements to its facilities. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said notes and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

No. 1513—In the Matter of the Complaint and Appeal of The Van Wert Gas Light Company Against and From an Ordinance of the City of Van Wert, Ohio, Entitled, "Ordinance No. 837 to Regulate the Price Which the Van Wert Gas Light Company, of Van Wert, Ohio, Its Successors and Assigns, May Charge for Gas During the Two Years Following the Passage and Taking Effect of This Ordinance." Prayer Granted.

(Dated December 22, 1919)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration, and the Commission, coming now to consider the complaint and appeal of The Van Wert Gas Light Com-

pany, of and from an ordinance, passed by the Council of the City of Van Wert, Ohio, on the twenty-second day of July, 1918, fixing the maximum price to be charged by the appellant, its successors and assigns, for the furnishing of artificial gas for public and private consumption in said city of Van Wert, Ohio, for a period of two years from and after the effective date thereof; and being fully advised in the premises, and having caused an appraisement to be made and having ascertained and determined and fixed the value of all of the property of said company actually used and useful for the convenience of the public in the furnishing of artificial gas for public and private consumption in said City of Van Wert, Ohio, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right, and exclusive of any value added thereto by reason of a monopoly or merger, and having taken into consideration the necessity of making reservation from income for surplus, depreciation and contingencies and all other matters which were deemed proper, including the actual costs of operating and maintaining the applicant's plant for the past two years, the Commission finds:

(1) That the rates and charges following, to-wit: \$1.40 per thousand cubic feet; meter rent, where gas consumed or paid for shall not exceed 50 cents per month.

fixed by said ordinance are unjust and unreasonable, and ought not to be ratified and confirmed, and that just and reasonable rates and charges should be substituted therefor.

(2) That the rates and charges following, to-wit: \$1.85 per thousand cubic feet; monthly minimum charge 50 cents. are just and reasonable rates and charges for the service furnished and supplied by said appellant.

(3) That the gross and net revenues derived by said The Van Wert Gas Light Company from furnishing artificial gas for public and private consumption and use in the City of Van Wert, Ohio, at the rates, prices and charges herein found by the Commission to be just and reasonable, will be sufficient to yield said The Van Wert Gas Light Company a reasonable compensation for such service. It is therefore,

Ordered, That the rates and charges hereinbefore found and determined by this Commission to be just and reasonable for the

furnishing of artificial gas service, by said The Van Wert Gas Light Company for public and private consumption and use within the City of Van Wert, Ohio, be, and hereby they are substituted for the rates and charges fixed by said ordinance, which the Commission has found to be unjust and unreasonable.

And the Commission having made inquiry and investigation with respect to the ability of said The Van Wert Gas Light Company to furnish artificial gas for public and private consumption and use in the City of Van Wert, Ohio, during the period fixed by said ordinance, and having found that said The Van Wert Gas Light Company is and will be able to furnish its said product in said city during said period it is therefore, further

Ordered, That rates, prices and charges not greater or in excess of the rates, prices and charges for artificial gas furnished by said The Van Wert Gas Light Company to the citizens and private consumers, and to public buildings, grounds, streets, lanes, alleys, avenues and market places of the City of Van Wert, Ohio, for public and private consumption and use, which the Commission has found herein to be just and reasonable, be and remain in force and effect for the period of two years from and after the effective date of said ordinance herein complained of and appealed from; and said The Van Wert Gas Light Company hereby is notified, directed and required to furnish its product to consumers thereof and for public and private purposes in said City of Van Wert, Ohio, for and during said period.

J

No. 1822—In the Matter of the Application of The Newark Telephone Company for Authority to Issue \$20,000.00 Par Value, Common Capital Stock and \$34,500.00, Par Value, Preferred Stock. Prayer Granted.

(Dated December 12, 1919)

This day this matter came on for final consideration upon the application of The Newark Telephone Company, asking the consent and authority of this Commission to issue common capital stock of the par value of twenty thousand dollars and six per cent. preferred capital stock of the par value of thirty-four thousand, five hundred dollars, the proceeds arising from the sale thereof to be used (a) to discharge, upon the maturity date thereof, viz: April first, 1920, its outstanding bonds of the principal sum of

\$10,000.00, and (b) to reimburse, in part, its treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, within the five years next preceding the date of the filing of the application herein and to the first day of November, 1919, for the acquisition of property and the construction, completion, extension and improvement of its facilities:

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that:

(1) That applicant now has issued and outstanding bonds of the principal sum of \$10,000.00, which mature upon the first day of April, 1920, when the same must be paid and discharged or lawfully refunded;

(2) That within the five years next preceding the date of the filing of the application herein and including the thirty-first day of October, 1919, the applicant actually expended from its treasury for the acquisition of property, and the construction, completion, extension and improvement of its facilities, the sum of \$70,877.33, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

(3) That the issue of applicant's said capital stocks is reasonably required and the money to be procured thereby necessary for the payment and discharge of its aforesaid indebtedness and the reimbursement of its treasury, in part, for the aforesaid uncanceled capital expenditures therefrom.

and is satisfied that consent and authority for the issue and disposition of said capital stocks should be granted. It is, therefore,

Ordered, That said The Newark Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty thousand dollars (\$20,000.00) and its six per cent. preferred capital stock of the par value of thirty-four thousand, five hundred dollars (\$34,500.00), and that said capital stocks be sold for the highest price obtainable but not less than par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stocks be devoted to and used for the following purposes and no others, to wit:

(a) The payment and discharge, at the maturity date thereof, of applicant's outstanding bonds of the principal sum of \$10,000.00, which mature April 1, 1920.

(b) The reimbursement, in part and to the extent of the balance of said proceeds, of applicant's treasury for the sum of \$70,877.33 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, within the five years next preceding the date of the filing of the application herein and ended October 31, 1919; for the construction, completion, extension and improvement of its facilities. It is further

Ordered, That, forthwith upon the payment of said outstanding bonds the same be cancelled and destroyed. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stocks and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

J

No. 1820—In the Matter of the Application of The Greenville Electric Light and Power Company, of Greenville, Ohio, to Issue \$25,000.00 of Seven Per Cent. Preferred Stock for the Purpose of Reimbursing the Treasury and Paying for \$18,500.00 of Notes Outstanding Having Less Than One Year to Run, Said Money Being Expended for the Construction of a Transmission Line to Serve The Eaton Lighting Company at Eaton, Ohio.—Prayer Granted.

(Dated December 8, 1919)

This day this matter came on for final consideration upon the application of The Greenville Electric Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue its seven per cent. preferred capital stock of the par value of twenty-five thousand dollars, the proceeds arising from the sale thereof to be used, (1) to discharge short-term promissory notes of the principal sum of \$16,500.00, and (2) to reimburse its treasury for the sum of \$8,500.00 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, with the moneys procured by the issue of the aforesaid notes, for the construction of a 33,000-volt transmission

line to serve The Eaton Lighting Company at Eaton, Ohio, the actual cost of which, to date, has been the sum of \$25,095.27.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the applicant has constructed a 33,000-volt transmission line to serve The Eaton Lighting Company, of Eaton, Ohio, at an actual cost of \$25,095.27; that the cost of said addition to applicant's facilities and property was paid, \$16,500.00 by issuing and disposing of short-term promissory notes of such principal sum, and \$8,500.00 from its treasury with moneys not procured by the issue of stock, bonds, notes or other evidences of indebtedness, and that the issue of applicant's said preferred capital stock is reasonably required and the money to be procured thereby necessary for the payment and discharge of the aforesaid lawful indebtedness and the reimbursement of applicant's treasury for said uncapitalized capital expenditures therefrom, and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Greenville Electric Light and Power Company be, and hereby it is authorized to issue its seven per cent. preferred capital stock of the total par value of twenty-five thousand dollars (\$25,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said preferred capital stock be devoted to and used for the following purposes and no others, to-wit:

(a) \$18,500.00 for the payment and discharge of applicant's short-term promissory notes, the loans procured by which were invested in the construction of a 33,000-volt transmission line to serve The Eaton Lighting Company at Eaton, Ohio.

\$8,500.00 to be applied toward the reimbursement of applicant's treasury for the further sum of \$8,595.27 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom for the completion of the aforesaid transmission line.

It is further

Ordered, That the applicant make verified report to this com-

mission of the issue and disposition of the aforesaid preferred capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

*

No. 1770—In the Matter of the Application of The Athens Gas, and Electric Company for Authority to Sell 30,000 Shares of the Preferred Capital Stock of The Cincinnati Gas Transportation Company.—Dismissed.

(Dated December 23, 1919)

This matter came on this day to be heard, and was heard upon the application of The Cincinnati Gas and Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking such consent and authority of this commission as will enable it to sell and convey to the Columbia Gas and Electric Company, (a corporation not subject to the jurisdiction of the commission), 30,000 shares of the preferred capital stock of The Cincinnati Gas Transportation Company, (another corporation not subject to the jurisdiction of the commission), pursuant to the terms of a certain agreement by and between the applicant and the said Columbia Gas and Electric Company.

Upon consideration whereof and being fully advised in the premises, the commission finds that its consent and authority for such sale of said capital stock is not required and, being without jurisdiction in the premises, it is

Ordered, That said application be, and hereby it is dismissed.

*

No. 1770—In the Matter of the Application of The Athens Gas, Light and Electric Company for Leave to Withdraw Its Natural Gas Service From the Municipalities of Athens and Chauncey, Both in Athens County, Ohio, and all Natural Gas Consumers Therein Supplied by This Applicant.—Dismissed.

(Dated December 10, 1919)

It being made to appear to the commission that the issues raised in this case have been adjusted between the parties thereto, to-wit: The Athens Gas Light and Electric Company, the City of Athens, Ohio, and the Village of Chauncey, Ohio, in so far as said

parties are affected thereby, by the acceptance of said the City of Athens, Ohio, and the Village of Chauncey, Ohio, of the following schedule, to-wit:

Filed November 29, 1919, effective December 29, 1919, and being for each municipality P. U. C. O. No. 6 cancelling P. U. C. O. No. 5, carrying the following rates:

46 cents per 1000 cubic feet for the first 5000 cubic feet each month.

53 cents per 1000 cubic feet for the next 5000 cubic feet each month.

58 cents per 1000 cubic feet for the next 5000 cubic feet each month.

62 cents per 1000 cubic feet for all over 15,000 cubic feet each month.

Subject to a discount of 3 cents per 1000 cubic feet if paid within ten (10) days after the bill for the previous monthly reading period has been issued.

Minimum charge—The price of 2000 cubic feet at rate first above mentioned.

which said schedule in designed and intended to conserve the supply of natural gas by restricting its use, and said adjustment being approved by the commission, it is therefore,

Ordered, That, upon application of said parties, this case hereby is dismissed.

ATTORNEY GENERAL

Under the Provisions of Section 7248 General Code, the Phrase "Total Width of Tire Surface on All Wheels" Means the Aggregate Width of That Part of All Tires on the Vehicle Which Actually Comes in Contact With the Road, in Other Words, the bearing Surface or Tread, not Allowing for Any Expansion at Point of Contact. The Width of Pneumatic Tires Should be Taken as Measured by Taking the Distance Between Parallel Lines Produced from the Extreme Edges of the Tire. The Word "Edges," as Here Used Being Referable to the Sides as Distinguished from the Face and Back of the Tire. The Measuring of Tire Surface of Solid Tires Should be Made by the Simple Practice First Above Mentioned.—The Only Jurisdiction Vested in a Justice of the Peace as to Violations of Sections 7246 and 7249 General Code, is Solely an Examining and Not a Final Jurisdiction.

No. 815—(Opinion Dated November 26, 1919.)

Hon. G. B. Findley, Prosecuting Attorney, Elyria, Ohio.

Dear Sir: Receipt is acknowledged of your communication asking an interpretation of Section 7248 as appearing in 107 O. L., 140, and also inquiring whether a justice of the peace has final jurisdiction in the matter of violation of said section.

Said Section 7248 reads as follows:

"No person, firm or corporation shall transport over the improved public streets, highways, bridges or culverts within this state, in a vehicle propelled by either motor or muscular power, a burden, including weight of load and vehicle, greater than the following:

In vehicles having iron or steel tires three inches or less in width a load of five hundred pounds for each inch of the total width of tire surface on all wheels. When the tires on such vehicles exceed three inches in width an additional load of eight hundred pounds shall be permitted for each inch by which the total width of the tire surface on all wheels exceeds twelve inches.

In vehicles having tires of rubber or other similar substance a load of eight hundred pounds for each inch of the total width of tire surface on all wheels. The provisions of this section shall not apply to iron or steel tire horse-drawn vehicles when in use upon the streets or thoroughfares of cities or upon

the streets and thoroughfares of villages, except such streets and thoroughfares therein as have been or may hereafter be improved by the state or county."

These provisions are to be read in connection with Sections 7246 and 7247, prohibiting a load of more than twelve tons except in certain instances by special permit.

A penalty for the violation of the provisions of said sections is provided by Section 13421-17 (107 O. L., 69) reading as follows:

"Any person violating any of the provisions of Sections 7246 to 7249 inclusive, of the General Code shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars."

In connection with your inquiry you state that:

"Thus far all trucks apprehended are equipped with solid tires of rubber and similar material and the manner and way in which we determine whether such trucks are overloaded is by measuring the 'total width of tire surface on all wheels' and by tire surface we take it that the law means that part of the tire which actually comes in contact with the road, in other words, the bearing surface or tread."

You ask in the course of your letter "What measurement shall govern if it appears that the width of the rubber tire increases upon its point of contact with the road?"

It is believed that the statute upon its face disposes of any claim that an alleged violator is entitled to the advantage, so to speak, of the expansion of a rubber tire at point of contact. It has been seen that the statute makes a distinction between vehicles having iron or steel tires and those having tires of rubber or other similar substance. To state this distinction concretely let us take for example a four-wheeled vehicle having steel tires four inches in width on all wheels,—a total tire surface of sixteen inches. For the first twelve inches, there is permissible a load of 6000 pounds; and for the remaining four inches an additional load of 800 pounds per inch, or 3200 pounds, thus giving, for the vehicle supposed, a total permissible load of 9200 pounds, including weight of load and vehicle. Taking this same vehicle and supposing it to be equipped with rubber tires of the same width, the total load allowable is 12,800 pounds,—800 pounds to each inch of tire surface.

The greater load thus allowed for the rubber tired vehicle is certainly to be accounted for in part by the very fact that rubber

tires will expand at point of contact; for it is readily understood that the expansion of iron or steel tires at point of contact is so minute as to be hardly susceptible of calculation. True, the principal difference between iron or steel tires and rubber tires is that less shock to the road results from the use of rubber tires; but plainly one of the factors entering into the lessening of shock is the expansion of the rubber tire at point of contact.

Hence, considering this distinction made by the legislature in favor of rubber tires, a conclusion that a further allowance is to be made on account of expansion is unjustified as going beyond the scope of what was intended by the legislature. Further, as a practical proposition, we are not at liberty to indulge the assumption that the legislature intended to cast on enforcing officials the duty on the one hand of making minute measurements of expansion, or on the other hand, of setting up in different localities shifting and arbitrary allowances for expansion.

Upon the whole, then, such difficulty as may arise in the practical application of the statute comes not from the fact of expansion, but rather in determining whether the expression "total width of tire surface on all wheels" is so rigid that it may not be applied to the measurement of both solid rubber tires and pneumatic tires. It is of course, a matter of common knowledge that there is an essential difference between these two types of tires. Their appearance and construction are entirely dissimilar. Their effect upon road surface must be considered from entirely different angles; for it is plain enough that as between two loads of equal weight, a much greater shock to the road and consequent wear and tear upon it will result from the load borne upon solid tires than from that borne upon pneumatic tires of width at point of contact equal to that of the solid tires, since the pneumatic tire by reason of its inflation serves in the greater degrees a cushion in relieving the road of shock.

Mention of these differences may possibly in a narrow sense be irrelevant to a consideration of your inquiry, since you state that all trucks thus far apprehended in your county have been equipped with solid tires. However, a fair consideration of the statute must proceed upon the theory that while it does not make any distinction in terms between solid rubber tires and pneumatic tires, it was nevertheless intended to provide for both classes, since both were well known to be in common use when the statute was enacted. Therefore, the statute cannot be invoked as to one type

and disregarded as to the other, but must be treated as having failed of its purpose unless it permits of a practical standard for measuring both types.

If it be conceded that the statute is broad enough to make provision for the practical measurement of both classes of tires, no difficulty is encountered in concluding that so far as concerns solid tires, your position is entirely correct and in accord with what would be the general understanding of the terms of the statute,—namely, that “total width of tire surface on all wheels” means the aggregate width of that part of all tires on the vehicle which actually comes in contact with the road,—in other words, the bearing surface or tread, not allowing for any expansion at point of contact. Putting this proposition in another way, if the vehicle were run over a layer of tar or some other adhesive substance, the impression left on the tire through the adherence of the substance would represent the true width of tire surface to be considered in calculating the total width. Force is lent to this conclusion by the fact that the bearing surface is readily discernible after usage, and the further fact that there is no inherent practical objection to accepting as within the plain intent of the statute the width as shown by simple instruments of lineal measure, just as the width of a steel tire is measured. And certainly, the conclusion is not in the least weakened by the fact that trade usage, because of the shape of the tire or the requirements of proper manufacture, may designate the standard width as somewhat in excess of that which comes in contact with the road.

Is this rule as to solid tire measurement necessarily to be applied to pneumatic tire measurement, with the result in practice that the use of pneumatic tires for truck hauling will have to be discontinued? Since the statute in question is regulatory in character, a pertinent rule for its construction is that quoted with approval by our Supreme Court in the case of *Gas & Fuel Co. vs. City of Chillicothe*, 65 O. S. 186, at page 206 of the opinion:

“When the real design of the legislature in ordaining a statute, although it be not precisely expressed, is yet plainly perceivable, or ascertained with reasonable certainty, the language of the statute must be given such a construction as will carry that design into effect, even though in so doing the exact letter of the law be sacrificed, or although the construction be, indeed, contrary to the latter.”

It should be kept in mind that while the statute fixes a maximum load for each inch of tire surface, it does not give a definition

of tire surface. Therefore, we must conclude that the term "total width of tire surface" is to be given its reasonable and practicable meaning.

The word "surface" is defined as follows:

"The exterior part of anything that has length and breadth; one of the limits that bound a solid; superficies; outside, as, the surface of the earth; the surface of a diamond; the surface of the body, a spherical surface."—Webster' Dictionary.

"The exterior part of anything that has length, breadth and thickness; the outside of a body; superficies; exterior.—Standard Dictionary.

Clearly, then, the Legislature did not use the word surface in a strictly literal sense, for taken in that sense "total width of tire surface" would as to a pneumatic tire represent its exposed width measured in circumference from one side to the other of the rim to which it is attached. Neither could the Legislature have intended the other extreme in measurement, namely, the width of that part of a pneumatic tire actually coming in contact with the road, for in that case, for the practical reason given above, the effect would be to cause the discontinuance of the use of pneumatic tires in truck hauling. To illustrate: The width at point of contact of a so-called ten-inch solid tire is approximately eight inches, whereas with a so-called ten-inch pneumatic tire the width at point of contact is approximately three and one-half inches, depending in part on degree of inflation, with the result in the case supposed that the weight allowed the solid tire would be 6400 pounds and the pneumatic tire but 2800 pounds.

We are thus left to the middle ground that the intent of the Legislature was that the width of pneumatic tires should be taken as measured by the only practicable method remaining after the exclusion of the two methods above mentioned, namely, by taking the distance between parallel lines produced from the extreme edges of the tire,—the word "edges" as here used being referable to the sides as distinguished from the face and back of the tire; or, stating the rule in another form, by taking the perpendicular distance between planes touching the extreme edges of the tire and parallelling the plane of the wheel to which the tire is attached.

It may be urged that inasmuch as the method just stated gives approximately the width as to pneumatic tires as understood in trade usage, the seemingly arbitrary terms of the statute would by parity of reasoning make trade usage measurement applicable to solid tires also. The answer is that the plain terms of the statute

permit, without untoward practical results, the measuring of tire surface of solid tires by the simple process hereinbefore mentioned, thus making unnecessary any report to extraneous consideration; whereas, with pneumatic tires, the only practical method of measurement is by a process of calculation which happens to accord approximately with trade usage measurement.

You have also requested an opinion as to whether justices of the peace have final jurisdiction of offenses under section 13421-17 General Code. That section, as has been seen, makes the violation of section 7248 General Code a misdemeanor punishable by fine. As part of the act in which section 13421-17 appears, there is also found section 13421-21, reading as follows:

"All courts of competent jurisdiction, including police judges, mayors of villages and cities, shall have jurisdiction as provided by law in all cases of violation of any of the sections contained in thist act."

Clearly, there is not in this section any affirmative grant to justices of the peace of final jurisdiction, whatever may have been the intent of the Legislature in that respect. The expression "including police judges, mayors of villages and cities" is an excrescence, since the final jurisdiction of those officers in misdemeanor cases had already been defined by sections 4577, 4536 and 4528, respectively. As compared with the broad provisions of the three sections just named, limited provision is made in section 13423 General Code for final jurisdiction in justices of the peace in certain classes of cases. However, there is not to be found in the last named section any reference to final jurisdiction in road traffic violations, nor has any provision been found elsewhere in the General Code conferring final jurisdiction in such matters upon justices of the peace. Hence, we are reverted to sections 13510 and 13511 General Code in the matter of jurisdiction of justices of the peace as to violations of sections 7246 to 7249 General Code, and as there is no authority vested in a justice of the peace to accept a plea of guilty as to such violations because there is no way by which the complaint may be filed by the "party injured" as those words are used in section 13510, it follows that the only jurisdiction vested in a justice of the peace as to violations of said sections 7246 to 7249 is solely an examination, and not a final, jurisdiction.

The Par Value of the Shares of Corporations Organized Under the General Corporation Laws of This State May be Increased or Reduced in the Exercise of the Power Conferred Upon Such Corporation by Section 8719, General Code, to Amend Their Articles of Incorporations so as to Increase or Decrease the Number of Shares Into Which Their Capital Stock is Divided, Provided the Authorized Capital Stock of the Companies is not Increased or Diminished Thereby, and also that the Par Value of Shares May be Reduced Under Section 8700 General Code, Governing the Reduction of Capital Stock.

No. 884—(Opinion Dated December 23, 1919)

Hon. Harvey C. Smith, Secretary of State, Columbus, Ohio.

Dear Sir: Your letter of recent date inquiring whether a domestic corporation has authority under section 8719 General Code to change the par value of its shares by amending its articles of incorporation, was duly received.

The statute referred to, so far as pertinent to your inquiry, provides that a corporation organized under the general corporation laws of this state may amend its articles of incorporation:

"So as to increase or decrease the number of shares into which its capital stock is divided; to provide for preferred stock, or dispense with unissued preferred stock; to change unissued common stock to preferred stock, within the limits permitted by law; to change unissued preferred stock to common stock; to add any or all of the provisions permitted by Sections 8668 and 8669 of the General Code, or to make new provisions of such nature with respect to newly authorized preferred stock; or to amend or eliminate such provisions as to unissued preferred stock; or to add to the articles anything omitted from, or which lawfully might have been provided for originally, or to take out of the articles any unnecessary provisions or provisions which might lawfully have been omitted from them originally, but the authorized capital stock of a corporation shall not be increased or diminished by such amendment."

The general rule is that a corporation cannot increase or reduce the amount of its capital stock, or the number or par value of its shares, without warrant of statutory authority (2 Clark & Marshall, Corps. pp. 1272 et seq., and 13021, 1 Cook, Corps. Secs. 281, 290; Cook, Stock & Stockholders, Sec. 290; Beach, Corps. Sec. 468; 5 Fletcher, Corps, Sec. 3473), and then only in the mode and subject to the limitations or restrictions prescribed by the statute which confers the authority (5 Fletcher, Corps., Secs. 3460, 3471).

The authority conferred upon corporations by Section 8719 General Code, to increase or decrease the number of shares into which its capital stock is divided, subject to the limitation or restriction that the company's authorized capital stock shall not be increased or diminished thereby, warrants the company in either increasing the number of shares of capital stock and making a corresponding reduction in their par value (as where the number of shares is doubled and the par value of each share is reduced one-half), or in reducing the number of its shares and making a corresponding increase in their par value (as where the number of shares is decreased one-half and the par value of each share doubled). In neither case would there be an increase or reduction in the amount of the company's authorized capital stock. Indeed, the only way in which the power to increase or decrease the number of shares could be exercised, without effecting an increase or reduction in authorized capital stock, would be to either increase or reduce the number of shares and change the par value of the shares to such an amount which, when multiplied by the total number of new shares, would produce a result equal to the amount of the company's authorized capital stock. Any other method of exercising the power would result in either increasing or decreasing the company's authorized capital stock,—a result which the statute expressly forbids.

In the event it is desired to increase or reduce the amount of authorized capital stock, companies subject to the general corporation laws must proceed under sections 8698 and 8700 General Code—the former governing the increase, and the latter the reduction. Of course, if the original articles of incorporation do not provide for preferred stock, and it is desired to increase the authorized capital stock by issuing preferred stock, the company must, in addition thereto, also amend its articles so as to provide for the new class of stock. See section 8698, fifth paragraph.

In 1911-12 Annual Report of Attorney General, Vol. 1, p. 126, it was held that a domestic corporation was not authorized by section 8719 General Code to change the par value of its shares, but since that opinion was rendered the statute has been amended so as to empower the company to increase or decrease the number of shares into which its capital stock is divided, provided the authorized capital stock is not increased or diminished thereby. As already pointed out, the only way in which the number of shares into which the company's capital stock is divided can be

increased or diminished without increasing or diminishing its authorized capital stock, would be to either increase the number of shares and make a reduction in their par value, or reduce the number of shares and make an increase in their par value.

The only other general statute authorizing a change in the par value of shares in section 8700 General Code, which provides that a corporation may reduce the amount of its capital stock and the nominal value of its shares. The change is effected, not by amending the articles under section 8719 General Code, but by the board of directors acting with the written consent of the persons in whose names a majority of the shares stand on the books of the company. The object to be effected by section 8700 General Code is a reduction in capital stock, whereas section 8719 General Code expressly prohibits such a change being made by amendment.

You are therefore advised that the par value of the shares of corporations organized under the general corporation laws of this state may be increased or reduced in the exercise of the power conferred upon such corporations by section 8719 General Code to amend their articles of incorporation so as to increase or decrease the number of shares into which their capital stock is divided, provided the authorized capital stock of the companies is not increased or diminished thereby, and also that the par value of shares may be reduced under section 8700 General Code governing the reduction of capital stock.

SECRETARY OF STATE

NEW CORPORATIONS.

Wally Hardware & Auto Co., Walhonding, \$10,000. C. J. Kirch, C. S. McFarland, F. G. Gamble, Nanna Gamble, Chloe Kirch.

Pioneer Farmers' Exchange Co., Pioneer, \$25,000. Adam Yoder, Forrest Dohm, Alvin Monroe, D. H. Claudan, N. J. Fix.

Becker Boy's Shop Co., Cincinnati, \$27,500. Charles C. Becker, R. A. LeBlond, Edwin S. Morrissey, Charles B. Terry, John L. Schrimper.

I. & V. Raincoat Co., Gallion, \$40,000. Harry Ionides, H. Valsamides, Karl Boehm, Walter Ressenauer, H. R. Schuler.

W. E. Young Co., Cincinnati, \$10,000. Carroll F. Crane, Wm. H. Schurchhardt, Henry K. Gibson, E. Young, L. F. Young.

Shale Brick Co., Columbus, \$100,000. W. T. Brown, W. C. Gager, L. R. Haag, R. M. Barrett, E. Terry.

A. J. Bingham Plumbing Co., Cleveland, \$30,000. Perry D. Caldwell, D. L. Schwab, R. P. Snyder, J. R. Robinson, D. T. May.

Realty Loan Co., Marion, \$50,000. J. M. Primm, F. B. Morrison, W. H. Holverstott, J. J. Stafford, George T. Geran.

Thomas-Bray Co., Cincinnati, \$50,000. C. A. Bray, A. F. Smith, E. C. Moore, Edna M. McDonald, Albert H. Morrill.

Hennegan Co., Cincinnati, \$100,000. John F. Hennegan, James H. Hennegan, Stanley J. Hennegan, Paul M. Hennegan, James T. Hennegan.

Equity Picture Co., Cleveland, \$35,000. George Palda, M. S. Cerrezin, Charles Rosenblatt, Stella Halama, Herman H. Finkle.

Lexington Home Building Co., Lexington, \$15,000. F. C. Hammond, F. D. Culp, Ed. Castor, D. F. Ritchie, E. Hammond, Thad. D. Kell, William Lutz.

Wadsworth Realty & Mortgage Co., Wadsworth, \$100,000. Louis F. Allen, H. C. Dibble, John W. Wells, William Artman, Charles Farr.

Ramsdell Bros. Co., Cleveland, \$110,000. Earle Ramsdell, R. B. Wilson, M. B. Vilas, C. D. Simmons, M. C. Haugh.

Jameson Co., Cincinnati, \$10,000. William H. Schmidt, Louis Wanner, A. M. Campbell, H. Woeste, Fred W. Nonninger.

Industrial Service Co., Toledo, \$10,000. Frank A. Simon, William F. Maginnis, H. G. Williams, L. L. Simon, N. R. McPherson, L. M. Stener.

Oakley Realty Co., Cincinnati, \$320,000. C. W. Shipley, John C. Endebrock, J. C. A. Walter, Ralph E. Rowalt, Herman A. Bayless.

North American Banking & Savings Co., Cleveland, \$125,000. J. M. Seliskar, A. Haffner, Frank T. Cullitan, John J. Grdina, M. J. Grdina, Anton Logar.

Community Creamery Co., Cleveland, \$25,000. James V. Anbrecht, Frank J. Chalus, L. Wiesenberger, Albert C. Moskopp, A. C. Wiesenberger.

Euclid Film Co., Cleveland, \$20,000. E. H. Finch, J. C. McMichael, H. M. Strachan, G. W. Hownt, M. S. Forrester.

P. H. Sampliner Co., Cleveland, \$125,000. M. W. Kastriner, E. I. Carnes, E. Mohler, S. W. Eyman, Ben Feniger.

Berger Brass Co., Cleveland, \$25,000. M. W. Bruml, H. L. Taylor, C. I. Goldsmith, H. S. Goldsmith, Lewis Drucker.

Owners' Economy Co., Cleveland, \$1,000. James A. Garfield, Maude A. Smith, Margaret F. Blackmon, Elizabeth C. Carroll, L. S. Lomasson, C. C. Cartwright.

H. W. Galley Co., Cleveland, \$10,000. Charles M. Buss, A. B. Oakes, Joseph H. Caldwell, L. A. M. Pejeau, H. B. Lindeman.

Best Coal and Coke Co., Dayton, \$20,000. John N. Best, Charles A. Baker, Russell V. Green, Robert H. Ball, James Anderson.

Cleveland-Midland Building Co., Cleveland, \$10,000. Roy A. Tuttle, James A. Swainson, James C. Newcomb, John G. Welsh.

Akron Enterprises Co., Akron, \$375,000. C. A. Barblian, John A. Brittain, N. O. Mather, R. H. Nesbitt, James P. Loomis.

Velvet Ice Cream Dayton Co., Dayton, \$300,000. Grover Higgins, W. R. Cockley, W. T. Kinder, Henry A. Mar-ting, C. F. Reavis, Jr.

Brookville Farmers' Grain Co., Brookville, \$30,000. Ward H. Stock, Fred E. Stock, A. H. Marshall, Lloyd Zumbrun, Fred Miller, Stephen Spengler.

Independent Dry Cleaning Co., Cleveland, \$10,000. Max Ellis, W. K. Stanley, F. B. Dreefer, M. A. Friedman, Samuel Horwitz.

M. J. Herr Co., Cleveland, \$100,000. Milton J. Herr, Carl E. Poorbaugh, J. M. Poorbaugh, Jr., George B. Mathews, Mantion M. Scott.

Tri-State Brick and Tile Co., Iron-ton, \$175,00. Wm. Klein, J. A. Roth, D. J. Davis, F. W. Bryson, J. M. King, Perry Coppes, B. H. Voss.

Cozy Homebuilders' Co., Cleveland, \$50,000. Lewis Drucker, B. D. Kieve, H. L. Taylor, H. S. Goldsmith, C. I. Goldsmith.

Bender Product Co., Cincinnati, \$5,000. Albert Steiner, J. M. Bender, Alan P. Munro, Theo. H. Morrow, R. T. Dickerson.

Hocking Valley Mine Supply Co., Athens, \$10,000. C. E. Haskins, Chas. Stadler, John Franklin, Robert Wilson, James Ruston.

Mink Run Coal Co., Columbus, \$10,000. Frank Schaeffing, C. R. Brown, C. D. Hitt, J. H. Davis, G. A. Davis.

Myers Replayer Co., Toledo, \$100,000. Hubert A. Myers, Chris. E. Meyers, Frank L. Mulholland, L. M. Rakestraw, Raymond J. Bower.

Wheel Top & Hardware Co., Cincinnati, \$10,000. George S. Brown, Glen Perrine, C. I. Bennett, R. E. Friedrich.

Union Cooperative Farms Co., Cleveland, \$100,000. Edwin Anderson, Wm. L. Rankel, Charles E. Solders, Jacob Singer, Maurice Singer.

Miami Body Works Co., Hamilton, \$25,000. Rollin J. Henley, William Heitkamp, H. C. Jacoby, Charlotte S. Henley, Guy Harrod.

Employers' & Manufacturers' Service Co., Cleveland, \$10,000. Joy S. Hurd, M. M. Wickham, R. G. Dawson, John S. Mazanec, Winfield Worline.

The Libbey Glass Mfg. Co., Toledo, \$1,000,00. J. D. Robinson, W. F. Donovan, J. W. Robinson, August Kadow, S. O. Richardson.

Paramount Metal Spinning and Stamping Co., Cleveland, \$50,000. Bernard Holz, S. A. Thorman, M. E. Blum, A. Krejci, Charles A. Lefkovitz.

The Good Auto Parts Co., Toledo, \$25,000. Fred Barshel, Hattie H. Bar-

shel, Benjamin Goodman, Emmett Corkle, James V. Easley.

South Side Sheet Metal Co., Akron, \$10,000. Leo Weiner, David Reich, Morris Roth, W. M. Jennings, R. B. Lawrence.

Syracuse Cooperative Store Co., Syracuse, \$5,000. James H. Quillin, W. H. Leiffheit, H. C. Diddle, Dana Abler, Alex Crooks, William Venoy, J. C. Hallam, Clermont L. Arnold.

Eastern Service Garage Co., Dayton, \$10,000. F. R. Winch, Marguerite C. Winch, Henry Burkhardt, E. E. Burkhardt, Charles D. Heald.

R. M. Allan Co., Cleveland, \$10,000. R. M. Allen, M. F. Parks, J. B. Waterworth, Emma Johnson, Clarence R. Bissell.

Petty Shoe Co., Lancaster, \$20,000. David F. Petty, William H. Petty, Merrill A. Petty, George L. Harger, M. Petty.

Datesh Grocery Co., Canton, \$10,000. Sam Datesh, Helen E. Roush, Nick Datesh, Albert Fink, E. M. Hensel.

Canton Bread Co., Canton, \$25,000. H. Hiner, P. Miller, J. T. Bickart, J. M. Blake, John Blake.

Increases

Crawford Mfg. Co., Cleveland, \$5,000 to \$10,000.

Fostoria Union Dairy Co., Fostoria, \$10,000 to \$30,000.

Cushion Metal Tie Co., Cleveland, \$25,000 to \$30,000.

Elmore Loan and Building Co., Cincinnati, \$1,000,000 to \$2,000,000.

Frey-Fisher Furniture Co., Cleveland, \$40,000 to \$75,000.

Laurel Realty Co., Cleveland, \$200,000 to \$500,000.

Farmers' Banking Co., West Liberty, \$25,000 to \$25,000.

Kroger Grocery & Baking Co., Cincinnati, \$1,000,000 to \$5,000,000 preferred.

Kroger Grocery & Baking Co., Cincinnati, \$1,000,000 to \$3,000,000 common.

International Telephone Co., Columbus, \$1,200,000 to \$2,000,000.

Fostoria Union Dairy Co., Fostoria, \$10,000 to \$30,000.

Decreases

Bryant Bros. Co., Columbus, \$100,000 to \$60,000.

Martin Steel Products Co., Mansfield, \$150,000 to \$100,000.

Superior Tool Co., Dayton, \$50,000 to \$10,000.

PUBLIC UTILITIES COMMISSION

No. 1854—In the Matter of the Application of The Peoples Telephone Company, of Carey, Ohio, for Authority to Issue Capital Stock. Prayer Granted.

(Dated December 31, 1919)

This day this matter came on for consideration upon the application of The Peoples Telephone Company, of Carey, Ohio, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this Commission to issue common capital stock of the total par value of twenty-five thousand dollars, sixteen thousand, two hundred dollars, par value of said stock to be issued and delivered, as fully paid and non-assessible, in full and final payment of the consideration for the property, franchises and assets of The Carey Farmers Telephone Company, (the purchase of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 1868), and the proceeds arising from the sale of the balance of such capital stock to be used to provide additions, extensions and improvements to said property.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceedings.

(1) That the property, so to be acquired by the applicant, is reasonably worth the sum of \$16,200.00;

(2) That the issue of applicant's said capital stock of the par value of \$16,200.00 is reasonably required and necessary for the acquisition of property, to be actually used and useful for the convenience of the public in the prosecution of applicant's corporate purposes, and

(3) That, the applicant not having submitted any estimates of said proposed expenditures, this application, in so far as it seeks authority to issue and dispose of capital stock of the par value of \$8800.00 should be continued for the receipt and consideration of such estimates and the taking of such further action herein as the same may warrant,

and is satisfied that consent and authority should now be granted for the issue and disposition of applicant's common capital stock of the par value of \$16,200.00. It is, therefore,

Ordered, That said The Peoples Telephone Company of Carey, Ohio, be, and hereby it is authorized to issue its common capital stock of the par value of sixteen thousand, two hundred dollars (\$16,200.00). It is further

Ordered, That said capital stock shall be issued and delivered, as fully paid and non-assessible, in full and final payment of the consideration for the property, franchises and assets of The Carey Farmers Telephone Company, the purchase of which, by the applicant, was duly consented to and authorized by order, this day made and entered in proceeding No. 1868, which order hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That this proceeding be, and hereby it is continued for the receipt and consideration of any estimates of proposed work which may be filed herein by the applicant, and the making of such further and other order, or orders herein, as may thereby be warranted.

And the Commission coming now to consider the acceptance and holding, by said The Carey Farmers Telephone Company of the aforesaid capital stock of The Peoples Telephone Company of Carey, Ohio, until such time as its assets may be distributed and itself dissolved, further finds, for the purposes of the making of the following order only, that the convenience of the public will be promoted by such acceptance and holding of said capital stock, and the public will thereby be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for such acceptance and holding of said capital stock should be granted. It is, therefore, further

Ordered, That said The Carey Farmers Telephone Company be, and hereby it is authorized to accept and hold \$16,200.00, par value, of the common capital of The Peoples Telephone Company of Carey, Ohio, until such time as its assets may be distributed and itself dissolved. It is further

Ordered, That the findings hereinbefore set forth shall not be binding upon this Commission in any future proceeding involving the rates or service of said The Peoples Telephone Company of Carey, Ohio.

No. 1845—In the Matter of the Application of The Ohio Power Company for Permission to Sell \$104,000.00, in Aggregate Principal Amount of its Thirty Year, Five Per Cent. Gold Bonds. Prayer Granted.

(Dated December 30, 1919)

This day, this matter came on for final consideration upon the application of The Ohio Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of the Commission to now sell, of certain of its thirty year, five per cent. gold bonds authorized to be issued and exchanged for certain outstanding underlying bonds by the order of this Commission heretofore made and entered in proceeding No. 833, such bonds of the principal sum of one hundred and four thousand dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of its treasury for moneys (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom in the retirement of one hundred and four thousand dollars, principal sum, of such underlying bonds:

Upon consideration whereof, and being fully advised in the premises, and in appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein:

(1) That the applicant has actually expended from its treasury for the retirement of \$104,000.00 outstanding underlying bonds, the sum of \$104,000.00, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

(2) That the money to be procured from the sale of \$104,000.00, principal sum, of applicant's thirty-year, five per cent. gold bonds (the issue of certain of which for the retirement of applicant's outstanding underlying bonds was found to be necessary in said proceeding No. 833) is reasonably required for the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom,

and is satisfied that consent and authority for the sale and disposition of said bonds should be granted. It is, therefore,

Ordered, That, of the said bonds authorized to be issued for the purpose of retiring its outstanding underlying bonds by the order heretofore made and entered in proceeding No. 833, said The

Ohio Power Company be, and hereby it is authorized to sell not exceeding one hundred and four thousand dollars (\$104,000.00), principal sum, of its thirty year, five per cent. gold bonds for the highest price obtainable, but not less than eighty percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be applied toward the reimbursement of applicant's treasury for the sum of \$104,000.00 (not procured by the issue of stock, bonds, notes or other evidence of indebtedness) actually expended therefrom for the retirement of \$104,000.00, principal sum, of outstanding underlying bonds, as more particularly enumerated in the application herein, which, for a description of such bonds, hereby is made part of this order by reference, nor shall such proceeds of said bonds be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the sale of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.



No. 1570—In the Matter of the Application of The Ohio Gas, Light and Coke Company of Toledo, Ohio, for Authority to Issue \$25,000.00 Par Value of Preferred Stock of Said Company, for the Purpose of Paying Promissory Notes of Said Company, Made and Issued in Accordance with Order No. 1523 of The Public Utilities Commission of Ohio, Which Order is Dated the Fourth Day of October, 1918. Prayer Granted.

(Dated December 8, 1919)

The Commission having heretofore, by order made and entered as of date February twentieth, 1919, herein consented to and authorized the issue and sale, for the highest price obtainable but not less than par value thereof, of the seven per cent. cumulative preferred capital stock of said The Ohio Gas, Light and Coke Company, of the total par value of twenty-five thousand dollars, and thereafter, in said order, prescribed the purposes for which the proceeds arising from the sale of said capital stock should be used:

This day came the applicant, said The Ohio Gas, Light and

Coke Company, and by its Supplemental Application herein and the evidence submitted upon the hearing thereof, represented and showed to the satisfaction of this Commission that, of the said capital stock hereinbefore herein authorized to be issued and disposed of, \$22,000.00, par value, remains unsold and, under the conditions now existing in the financial markets and surrounding the sale of securities, cannot be satisfactorily marketed, and petitioned the Commission for authority, pending the sale of said unsold capital stock, to issue its promissory note, or notes, of the principal sum of \$22,000.00, to be secured by a pledge of said capital stock as collateral security therefor, to procure the money hereinbefore found by this Commission to be reasonably required and necessary for the lawful purposes of said corporation:

Upon consideration whereof, and being fully advised in the premises, the Commission finds that the issue of said note, or notes, secured by said capital stock as collateral security therefor, is reasonably required and the money to be procured thereby necessary for the purposes of said corporation, as in the former order made and entered herein, found to be necessary, and is satisfied that consent and authority for the issue and disposition of said note, or notes, and the pledge as collateral security therefor of said capital stock, should be granted. It is, therefore,

Ordered, That said The Ohio Gas, Light and Coke Company be, and hereby it is authorized to make and issue its promissory note, or notes, maturing in not to exceed two years from the date thereof, of the principal sum of twenty-two thousand dollars, (\$22,000.00), which notes shall be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That said The Ohio Gas, Light and Coke Company be, and hereby it is authorized to secure the payment of the principal and interest of said notes by depositing, as collateral security therefor, as fully paid and non-assessible, \$22,000.00, par value, of its seven per cent. cumulative preferred capital stock, hereinbefore herein authorized to be issued and sold. It is further

Ordered, That the proceeds arising from the sale of said note, or notes, shall be used for the purposes prescribed for the use of the proceeds arising from the sale of the capital stock authorized to be issued and sold in the former order made and entered in this proceeding. It is further

Ordered, That, whenever and as the applicant make negotiate the same during the time said notes are outstanding, it may con-

vert said notes into said preferred capital stock deposited as collateral security therefor, by an exchange, at par, of said capital stock for said notes, or any part thereof. It is further

Ordered, That, in the event the applicant is required to pay said notes, or any part thereof, it shall do so only upon the surrender to it of an amount of said capital stock equal, in par value, to the amount of the principal of said notes which the applicant shall be required to pay, and all such capital stock so reacquired by the applicant shall be held in its treasury and shall, in no event, be reissued, either by original certificate, substitute certificate, or otherwise, except upon the further order of this Commission. It is further

Ordered, That the applicant make verified report to this Commission of the exercise of the authority herein granted.

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No. 1790—In the Matter of the Application of The Buckeye Light and Power Company for Consent and Authority to Issue \$12,500.00 Common Capital Stock. Prayer Granted.

(Dated December 22, 1919)

This day this matter came on for consideration upon the application of The Buckeye Light and Power Company, (a corporation organized under the laws of Ohio), asking the consent and authority of this Commission to issue its common capital stock of the par value of \$12,500.00 the proceeds arising from the sale thereof to be used to reimburse its treasury, in part, for uncanceled capital expenditures therefrom to September first, 1919:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That, within the five years next preceding the date of the filing of the application herein and to the first day of September, 1919, the applicant actually expended from its treasury for the acquisition of property and the construction, completion, extension and improvement of its facilities, the sum of \$12,635.23 none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness;

(2) That the applicant is now indebted to its customers, for and on account of the advancements, by new customers, of the sum of \$3298.00 for the installation of service lines, etc., which sum is now carried in applicant's accounts as Donations Reserves, and which sum is to be rebated to such customers under a special form of contract providing therefor, and

(3) That the issue of applicant's said capital stock is reasonably required and the money to be procured thereby necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom and, when and as said advances have been refunded to its customers, the said repayments,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore.

Ordered, That said The Buckeye Light and Power Company, be and hereby it is now authorized to issue its common capital stock of the par value of nine thousand, two hundred dollars (\$9,200.00) and, hereafter, when it has repaid to its customers the \$3,298.00 advanced by them for the construction of service lines, etc., additional such stock of the par value of three thousand, three hundred dollars (\$3,300.00), and that all of said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to wit:

(a) From the said \$9200.00 of such stock, now authorized to be sold, the partial reimbursement, in said sum, of applicant's treasury for the aforesaid uncanceled capital expenditures of the sum of \$12,635.23 therefrom to September first, 1919, and

(b) When and as said sum of \$3298.00 has been repaid to its customers advancing the same, the reimbursement of its treasury therefor with the proceeds from the sale of said \$3300.00, par value, of such stock.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 1652—In the Matter of the Application of The Union Savings Bank and Trust Company as Trustee for the First Mortgage Note Holders of The Cincinnati and Columbus Traction Company, to Permanently Abandon and Discontinue the Service and Operation of Said Company, and to Dismantle its Railroad by Removing the Rails, Ties, Poles, Wires, Overhead Construction and all Other Property and Disposing of the Same, Including Sub-stations, Real Estate, Buildings, Machinery and Rolling Stock. Prayer Granted.

(Dated December 24, 1919)

This day, after full hearing, this matter came on for further consideration upon the pleading filed herein by said The Union Savings Bank and Trust Company, as Trustee for the owners of the property formerly belonging to The Cincinnati and Columbus Traction Company, asking, among other things, that it now be authorized to discontinue the operation and abandon all of said property:

Upon consideration whereof, and being fully advised in the premises, and representations having been made to this Commission that the line of railroad, so operated by the applicant, from the City of Norwood to the Village of Owensville, was and is in an unsafe condition, the Commission caused an inspection thereof to be made by its Railroad Department, whose report, this day filed, discloses that said line of railroad is in a most deplorable condition, and the roadbed, tracks, bridges and overhead structures unsafe for the ordinary operation of an electric interurban railroad, and the evidence adduced at the hearings upon said application having shown conclusively that said railroad was not making its operating expenses, and, further, that its financial condition is, and for some time past, has been such that no funds are available for the purpose of making the repairs necessary to put said roadbed, track, bridges and structures in a safe condition and render the same usable for the transportation of persons and property, the Commission does now find, that the operation of said road is extremely dangerous to the traveling public, and ought to be abandoned, and hereby it is

Ordered, That said The Union Savings Bank and Trust Company, as Trustee for the owners of the property formerly of The Cincinnati and Columbus Traction Company, be, and hereby it is authorized to discontinue the operation of said line of railroad, as now being operated between the City of Norwood and the Village

of Owensville, Ohio, from and after the thirty-first day of December, 1919. It is further

Ordered, That forthwith, and for so long as said line of railroad shall continue in operation, the scheduled running time shall be restricted to a speed of fifteen miles per hour, except over, through and upon the bridges, cuts and curves thereof, where the maximum speed shall be restricted to a rate of five miles per hour.

And the Commission coming now to consider that part of said application asking authority to discontinue the electric lighting service now furnished by the applicant, finds, from the aforesaid testimony, that certain contracts for electric lighting service are existing between the applicant and certain municipalities and consumers along said line of railroad, which have some time yet to run, and, in view of the fact that a discontinuance of such service at this time, without notice to such consumers, will not permit of the substitution of another means of lighting, it is, therefore, further

Ordered, That the applicant be, and hereby it is authorized to discontinue and abandon its said lighting service upon the first day of April, 1920, unless, in the meantime, other arrangements for such service can be made which will be acceptable to the consumers thereof.

ATTORNEY GENERAL

The County Commissioners May Issue Bonds Under Section 6929 General Code, for a Special Improvement, but not Otherwise, Without Having Made as Yet any Levy for the County Road Improvement Fund Under Section 6926 General Code, or its Supplementary Sections. In Issuing Such Bonds, However, the Commissioners Must, by Resolution, Bind Themselves and Their Successors to Make the Anticipated Levies to the Extent Necessary for Interest and Sinking Fund Purposes in Connection with the Bonds and to Make the Underlying Levy Spoken of in Section 6929 for the Purpose of Guaranteeing the Collection of the Township Taxes and Special Assessments Anticipated. It then Becomes Incumbent Upon the Commissioners and Their Successors to Raise by Taxation or Otherwise a Sufficient Amount During the Years Covered by the Bonds to Meet the Interest and Sinking Fund Charges Thereon. This Duty May be Enforced by Mandamus.

No. 887—(Opinion Dated December 24, 1919)

Hon. P. A. Saylor, Prosecuting Attorney, Eaton, Ohio.

Dear Sir: I have your letter of recent date advising that at the November election in Preble County the electors approved a proposition to levy to the extent of one mill for a period of two years for a purpose which you do not state. Inasmuch, however, as you speak of the issuance of bonds and refer to the levy as an "extra levy," it is assumed that the reference is to action under sections 6926-1 et seq. of the General Code, and that the effect of the vote of the electors is to exempt the levy provided by section 6926 for a county road improvement fund from all the limitations of the law relating to tax levies.

Please find enclosed herewith copy of an opinion to the Tax Commission of Ohio in which the legal possibility of extending such levy on the tax duplicate for the year 1919-20 is considered. It is pointed out in that opinion that with the cooperation of the various officials concerned it is possible to do this.

However, in your case the tax collecting officials have chosen to proceed without reference to the fact that the proposition to exempt the levy was pending and have not withheld the duplicate to ascertain the will of the electors. On the contrary, the duplicate

was delivered, as you state, on October 1st and some tax collections have already been made. Meanwhile all the tax receipts have been made out and it would be very inconvenient to attempt to alter the situation at this time.

In the absence of any affirmative action on the part of the commissioners or the tax commission of Ohio, it is the opinion of this department that the collection of taxes should proceed without attempting to disturb the levies as made. The previous opinion, copy of which is enclosed herewith, is not out of harmony with this conclusion inasmuch as the topic of discussion therein was the authority of the various officers to place the levy on the current duplicate, and the consequence of their failure to exercise such authority was not considered.

It is also presumed from your letter that the proposition submitted to the electors was not specific in the naming of the years in which the levy should be made. In other words, it is supposed that your statement "a period of two years" reflects the exact proposition that was submitted to the electors and that no particular years were mentioned. That being the case, the favorable vote of the electors affords authority to the commissioners to make the levy outside of the limitations during the next two years, viz: 1920-21 and 1921-22.

All this you apparently assume, and inquire whether or not bonds can now be issued in anticipation of the levy and collection to be made in future under this authority. As you state your question, even with the assumption above made it can be shortly answered by the statement that no authority to borrow money in anticipation of the yield of a special tax levy of the kind referred to, or any other kind, without reference to some specific purpose, such as road improvement, exists. That is to say, assuming that the levy in question is a road levy under section 6926 General Code, exempted from tax limitations by reason of the favorable vote of the electors under sections 6926-1 to 6926-3 inclusive of the General Code, the county commissioners may not issue bonds in anticipation of the levy and collection thereof without having some specific road improvement in mind and limiting the amount of the issue to the estimated cost of the improvement, in which event the anticipation of the taxes under the sections named would extend only to the county's share of the total cost and expense of the improvement. The only authority which exists in the premises is that conferred by section 6929 General Code, which provides as follows:

"The county commissioners in anticipation of the collection of such taxes and assessments may, whenever in their judgment it is deemed necessary, sell the bonds of said county in the aggregate amount necessary to pay the estimated cost and expenses of such improvement. * * *"

From this section it is apparent that a specific improvement must be in mind and that the borrowing power is limited by reference to the estimated cost of the improvement itself.

No other statute authorizes the anticipation of such levies in any way. It would therefore follow that if your question be interpreted in the broad manner just suggested a negative answer would have to be returned thereto.

It may be supposed, however, that your commissioners have under advisement the making of certain specific improvements, and desire to know whether or not they may proceed with these improvements and issue bonds therefor in anticipation, in whole or in part, of the levy in question.

In answering this question I shall make one further assumption—not because it is necessary to do so but in order to put the case which may exist in the strongest light. This assumption is that the commissioners of Preble county did not levy any tax under section 6926 on the duplicate for the year 1919-20, so that the levy outside the limitations which they are now authorized to make is the only levy for such purpose which is in existence or in contemplation.

Referring again to section 6929 General Code and to that part of it which has been previously quoted, it will be observed that it speaks of the anticipation of the "collection of such taxes and assessments." The word "levy" is not used. It might be argued from this omission that the taxes and assessments to be anticipated must be levied and in process of collection before the power to issue bonds exists. This argument is very plausible but it overlooks certain very important considerations.

In the first place, we must bear in mind that although by force of Sections 6926-1 to 6926-3, inclusive, authority may be acquired by the commissioners to make certain exempt levies for a particular period of years, yet the result is no more than this, and the favorable vote of the electors does not in and of itself automatically make the levy for the number of years referred to. This is made clear if in no other way by the express provision of Section 6926-3, which is to the following effect:

"If a majority of the electors * * * vote in favor of such levy * * * it shall be lawful to levy taxes within such county at a rate not to exceed such increased rate for and during the period provided for in such resolution."

In other words, the vote of the electors does not make the levy but merely makes it lawful for somebody else, i.e., the commissioners, to levy outside of certain limitations.

Nor is there anything in these sections to indicate that such authority is to be exercised once and for all by a single act effective through the period of years covered by the vote of the electors. More language than has been used in the provision last quoted will be necessary to convey this meaning. The presumption is to the contrary, for under the general scheme of taxing machinery which obtains in this state and is embodied in numerous sections which need not be quoted, particularly in the Smith One Per cent law so-called, Sections 5649-1 to 5649-6 inclusive of the General Code, the act of levying taxes is an annual affair. In this respect taxes differ from special assessments, which are levied once and for all and must then be placed upon the duplicates of the years during which they are to be collected. Taxes are levied each year at the proper time by the levying authorities.

But the argument just made is not the only one which may be brought to the support of the conclusion which has been expressed. Section 6926-1 General Code refers to the proposition submitted to the electors in the following terms:

"The question of exempting from all tax limitations the levy of two mills provided by Section 6926 of the General Code for the purpose of paying the county's proportion of the * * * cost and expense of constructing * * * county roads, or the question of so exempting a part of such levy * * *."

As pointed out in the previous opinion copy of which is enclosed herewith this language has the effect of making the act of levying referable not to sections 6926-1 et seq. of the General Code, but to section 6926 the result of the election under section 6926-1 et seq. being merely to give to such action a legal effect which it would not otherwise have.

This being so, the real levying authority after all is found in section 6926, which provides merely

"* * * For the purpose of providing by taxation a fund for the payment of the county's proportion of the costs and expenses of constructing * * * roads under the provisions

of this chapter, the county commissioners are hereby authorized to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county."

What is the purpose of this levy? It is to provide a "fund"—not to meet any specific proportion of the cost and expense of constructing, improving or repairing a particular road. It is very clear that this levy may be made whether particular road improvements are in contemplation or not, and is not limited in amount by the cost and expense of any such improvement. Conversely, there is nothing to indicate that the making of such levy in any given year is a prerequisite to lawful action to improve a given road, provided the necessary money can be lawfully secured by the issuance of bonds.

But in addition to these considerations it is very clear that this levy under section 6926, the purpose of which is merely to provide a fund, is, like tax levies generally are under the policy of this state to which reference has been made an annual affair. The commissioners are to determine, each year for itself, how much they will levy within the limits specified in the section for the purpose of keeping up, as it were, the county road improvement fund. Then they are at liberty to draw upon this fund for the purpose of making particular county road improvements under the provisions of the chapter, which include, of course, contribution of the county's share of the road improvement to be paid for in part by township levies or by assessments.

From all these considerations it is very clear that the whole amount to be raised by taxation under section 6926 or section 6926-1 and succeeding sections for the purpose of a particular road improvement is not to be "levied" in any sense in order to make such funds the lawful subject of "anticipation" under section 6926 General Code. Any other interpretation would be absurd. It would require that the entire cost and expense of a particular road be levied for in a single year, and would limit the office and function of the issuance of bonds to securing the money only a few months in advance of its accrual to the treasury through the processes of tax collection. This cannot be the correct result because the bonds section 6929 may run for "not more than ten years." Clearly, therefore, levies to be made during a period not in excess of ten years may lawfully be anticipated by the issuance of bonds.

This last provision of itself evidences a very clear index to the correct interpretation of the sections involved when coupled up

with the statement that levies under section 6926 are to be made annually.

But there is still another consideration which reflects upon the meaning of the clause of section 6929 now under consideration. The bonds may be issued not only in anticipation of the county taxes, but also in anticipation of the township taxes, to which the arguments already made would apply. Moreover, they are issued not only in anticipation of taxes but also in anticipation of assessments. Here, as previously intimated, even stronger reasons exist for arguing that the omission of the word "levy" is significant because assessments are not levied annually but are estimated and apportioned once for all, and when certified must go on the duplicate during the years within which they are to run without further action by the levying authorities. Hence the arguments already adduced would not apply to the anticipation of assessments in and of itself except in so far as the conclusions previously reached with respect to the anticipation of taxes might reflect upon the true meaning of the sentence under examination in respect of the anticipation of assessments.

Attention may be called to section 6923 General Code, which provides as follows:

"All assessments, with interest accrued thereon, made under the provisions of this chapter, shall be placed by the auditor upon a special duplicate to be collected as other taxes, and the principal shall be payable in not more than twenty semi-annual installments extending over a period of not more than ten years, as determined by the county commissioners. In the event that bonds are issued to pay the compensation, damages, costs and expenses incident to such improvement, the principal sum of such assessments shall be payable in such number of equal semi-annual installments as will provide a fund for the redemption of the bonds so issued, and such assessments shall bear interest from the date of and at the same rate as the bonds, and the interest shall be collected in like manner as the principal of such assessments."

The latter part of this section would be impossible of application if the levy of the assessments preceded the issuance of the bonds; for it is very clear therefrom that the maturities and interest rate of the bonds condition the installments and the interest rate of the assessment, rather than that the installments and interest rate of the assessments condition the maturities and interest rate of the bonds. It is very clear therefore that an assessment cannot at least be finally and unalterably made until after the bonds are issued.

While no opinion is expressed herein as to whether or not the "estimated assessment" spoken of in section 6922 General Code must be adopted by the commissioners before the bonds are issued, it is very clear that no final levy can be made until the bonds are issued.

The conclusion which follows is that, despite the omission in the first sentence of section 6929 of the word "levy", the section is to be read as if it were actually there. In other words, though what may be "anticipated" under section 6929 according to its literal terms is merely the "collection of such taxes and assessments", so that it is arguable that "such taxes and assessments" must be in process of collection before the bonds may be issued; yet this cannot be the result for the reasons indicated and the word "collection" must be interpreted practically as if it were "levy and collection."

Thus far consideration has not been given to Article XII, section 11 of the Constitution, which provides as follows:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

As construed in *Link vs. Karb*, 89 O. S., 326, this section does not require a levy be actually made for interest and sinking fund purposes before the bonds are issued. On the contrary, the doctrine of that case as expressed in the third branch of the syllabus thereof is as follows:

"This provision of the constitution does not require that at the time the issue of bonds is authorized there shall then be levied any specified amount or any specific rate, but it does require that provision shall then be made for an annual levy during the term of the bonds in an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity, which levy must be made annually in pursuance of the provisions of the original ordinance or resolution requiring the same. The amount necessary to be levied for the purposes specified is to be determined by the taxing officials at the time the levy is made."

Applying this doctrine to section 6929 and related sections, the following consideration appears:

(1) The "anticipation" of the county levy to pay the county's

share is of itself an appropriation of a ratable proportion of that levy for the purpose of meeting such proportion of the interest and sinking fund requirements of the issue as should be borne by that levy. When so much of the tax has been thus "anticipated" the duty exists on the part of the county commissioners in making their levies under sections 6926 and 6926-3 General Code to levy and apportion a sufficient amount for this purpose. This duty can be enforced by mandamus once the bonds are so issued. In the resolution under which the bonds are issued this duty should be specifically declared in order to comply with Article XII, section 11 of the Constitution as interpreted in the case cited.

(2) The remainder of the interest and sinking fund charges of the bonds is to be met by the township taxes and assessments. There may conceivably be a failure on the part of such township taxes and assessments to meet their respective shares of the interest and sinking fund requirements of the bonds. To provide for this contingency the commissioners must in their resolution "provide for the levying of a tax upon all the taxable property of the county to cover any deficiencies in the payment or collection of any special assessments or township taxes anticipated by such bonds." (Section 6929). By this double method of providing for the interest and sinking fund levies and guaranteeing the raising of a sufficient amount by taxation in each year for such purposes, the commissioners will have declared in their resolution that the bonds are ultimate general tax obligations of the county and that the full faith and credit of the county as a whole is back of them; they will also by their resolution have made it mandatory upon themselves and their successors in office, during each of the years within which the bonds are to run, to provide fully by the means thus designated for the interest and sinking fund charges on the bonds. This mandate is just as effective whether the first levy of taxes has been made at the time the bonds are issued or not. Thus the Constitution will have been complied with to the extent at least that it is possible to comply with it by following the statute. No opinion is, of course, invited or expressed upon the constitutionality of the section, which does not seem to be questioned.

The word "annually" in the Constitution must have reference to the years in which, after the bonds are issued, it would be possible according to the laws regulating the levy of taxes, to make such levies. If bonds are issued at any time shortly after the levies for a given year are made up it is obvious that the first yield of

taxes which may be levied for interest and sinking fund purposes on account of such bonds may not accrue until after the expiration of the first twelve months following the date of the issuance of the bonds. It does not therefore follow that bonds may not be issued at such times. If the tax is duly levied at the first opportunity provision for the first accruing interest may be made by applying general sinking fund balances where they exist or by temporary transfer of general fund balances to the sinking fund in anticipation of the yield of the sinking fund levy. At all events the Constitution will have been complied with when the interest and sinking fund levies are made at the first opportunity, and they are sufficient in amount to meet the charges that will have accrued or will accrue during the period to be provided for by such initial levy.

The full answer to your question therefore is as follows:

The county commissioners may issue bonds under section 6929 General Code for a specific improvement, but not otherwise, without having made as yet any levy for the county road improvement fund under section 6926 General Code or its supplementary sections. In issuing such bonds, however, the commissioners must, by resolution, bind themselves and their successors to make the anticipated levies to the extent necessary for interest and sinking fund purposes in connection with the bonds and to make the underlying levy spoken of in section 6929 for the purpose of guaranteeing the collection of the township taxes and special assessments anticipated. It then becomes incumbent upon the commissioners and their successors to raise by taxation or otherwise a sufficient amount during the years covered by the bonds to meet the interest and sinking fund charges thereon. This duty may be enforced by mandamus.

SUPREME COURT

SYLLABI OF REPORTED CASES

16374—The City of Lima vs. The Public Utilities Commission of Ohio. Error to the Public Utilities Commission of Ohio.

MATTHIAS, J.

1. Section 4, Article XVIII of the State Constitution, authorizes municipalities to contract with public utilities for their product or service to be furnished to the municipality or its inhabitants, and when such contract duly executed fixes the rate and charge for furnishing such product, the Public Utilities Commission of the state is not empowered to authorize such public utility to exact the payment of a rate or charge in excess of that agreed upon.

2. Where a gas company enters into a contract with a municipality and thereby agrees for a term of three years to furnish gas to such municipality and its inhabitants at a rate and charge therein stipulated, it being further agreed that no meter rental shall be charged by the company, the exaction of a "readiness to serve charge" in addition to the rate agreed upon is violative of the terms of the contract and cannot be validated by an order of the Public Utilities Commission.

Order reversed.

Nichols, C. J., Jones, Johnson, Wanamaker, Robinson & Merrell, JJ., concur.

16272—Charles W. Hammond, as County Treasurer of Perry County, Ohio, vs. John H. Winder, Receiver of The Sunday Creek Coal Company. Error to the Court of Appeals of Perry County.

JOHNSON, J.

1. By the provisions of Section 512, General Code (107 O. L., 35), it is the duty of each county auditor, when required by the Tax Commission of Ohio, to make out and transmit to the Commission an abstract of the real and personal property of each taxing district in his county, in which he shall set forth the aggregate amount and value of each class of real and personal property as it appears from his tax list and from the statements in his office.

2. The Tax Commission of Ohio is required by Sections 5612 to 5615, General Code, inclusive, to annually determine whether the real and personal property and the various classes

thereof in the different counties, cities, villages and taxing districts have been assessed at their true value in money. If not, the Commission may increase or decrease the aggregate value of the real or personal property, or any class thereof, in any such subdivision or district, by such rate per cent, or amount as will place it on the tax list at its true value in money. The Commission is not empowered to act with respect to any particular piece or parcel of property of any particular owner in a taxing district. But it acts with reference to the aggregate value of the real and personal property, or any class thereof, in the district, except in cases of appeal under Section 5610, General Code, and with respect to the property of public utilities.

3. When the county auditor has received from the Tax Commission a statement of an amount or rate per cent to be added to or deducted from the valuation of such property, or class thereof, in the manner provided by Section 5614, General Code, his duty is mandatory to forthwith add to, or deduct from, each tract, lot or parcel of real estate or class of real property the required per cent or amount of the valuation thereof, in the manner specified in Section 5615, General Code.

4. Where the action of the Tax Commission, pursuant to statute, relates to the aggregate value of the real property, or class thereof, in a taxing district as units, the fact that no notice is required to be given of such action does not render the statute unconstitutional or the action of the Commission invalid.

5. While special burdens by way of special assessments cannot be laid on property without notice to the owner and opportunity to him to be heard, no special notice of the proceedings by which general taxes are laid by aggregate assessments upon the property, or classes thereof, in counties or other taxing districts as units is necessary. The statutory provisions under which the taxing authorities proceed in that behalf are sufficient notice in the absence of affirmative requirement by statute.

Judgment reversed.

Jones, Matthias, Wanamaker and Robinson, JJ., concur. Merrell, J., took no part in the case.

MOTION DOCKET

10354—Hannah D. Underwood et al. vs. Enos K. Rutan et al. Motion by plaintiffs to dispense with printing part of record in cause No. 1630 on the general docket. Sustained.

10355—Clayton D. Fairchild vs. The Lake Shore Electric Ry. Co. Motion by plaintiff to dispense with printing exhibits in cause No. 16369 on the general docket. Sustained.

10356—J. W. Chesrown vs. Arthur W. Bevier. Motion for an order directing the Court of Appeals of Richland County to certify its record. Overruled.

10357—James Kennedy vs. The State of Ohio. Motion for an order directing the Court of Appeals of Cuyahoga County to certify its record. Overruled.

10359—Madison Gatton et al. vs. L. D. Barr, Admr., et al. Motion for an order directing the Court of Appeals of Richland County to certify its record. Sustained.

10360—The Hocking Valley Ry. Co. vs. W. A. Gosline & Co. Motion for an

order directing the Court of Appeals of Lucas County to certify its record. Overruled.

GENERAL DOCKET

16322—Kathleen Wegener vs. Edward Wegener. Hamilton. Judgment of Court of Appeals reversed and that of Common Pleas affirmed.

16223—Jacob Holmes vs. George Snyder. Crawford. Judgment affirmed.

16238—The Dayton & Troy Electric Ry. Co. vs. H. E. Scott, Treas., et al. Miami. Judgment reversed. Judgment for plaintiff in error.

16335—Fred Shaw vs. The State of Ohio. Summit. Judgment affirmed.

16341—The Marietta & Vincent R. Co. vs. The Public Utilities Commission of Ohio. Public Utilities Commission. Order affirmed.

16441—State of Ohio ex rel. Inter-Insurance Agency Co. vs. William H. Tomlinson, Superintendent of Insurance of the State of Ohio. In mandamus. Writ to issue.

SECRETARY OF STATE

NEW CORPORATIONS

Black Dispatch Publishing Co.; Cincinnati, \$5,000. John A. Bell, John L. Simms, Robert L. Lee, J. F. Walker, W. Miller, E. J. McCray, H. Breckenridge, C. Price.

Spence Music Co., Zanesville, \$40,000. E. G. Callander, Eli A. Palmer, C. T. Marshall, E. H. Callander, Chas. Spence.

Wizard Mfg. Co., Youngstown, \$35,000. S. J. Hurwitz, Max Brown, Albert Friedman, Joseph Rigane, L. L. George.

Canton Exide Battery Co., Canton, \$8,000. J. T. Bickart, Walter E. Schaeffer, G. S. Schaeffer, P. Miller, John T. Blake.

Flexible File Co., Fremont, \$10,000. George Zimmerman, Norman Fulton, A. Zimmerman, C. L. Halter, Helen Z. Fulton, E. L. Pogue.

Marquette-Bailey Lumber Co., Youngstown, \$75,000. N. Marquette, G. D. Williams, A. C. Bailey, E. Marquette, Sherley Galen.

Lima Taxi Co., Lima, \$10,000. Edwin Krause, L. A. Pepiet, Harmon Beach, Beryl A. Shearer, Dorothy R. Crumrine.

Harlow Park Co., Cleveland, \$10,000. J. A. Smith, Clan Crawford, H. L. Barkdull, A. P. Martin, N. M. Odenkirk.

Slavonian National Home Co., Lorain, \$50,000. J. Piskur, Frank Justin, John Kotnik, Ruten Miglich, John Kumse, John Ivancic.

Ohio Pure Milk Co., Youngstown, \$150,000. Samuel Z. Schaevitz, Max Knell, Ike Schaevitz, I. Vagnozzi, Hayes R. Dalzell.

Starkey Supply Co., Akron, \$30,000. Charles B. Starkey, Alice L. Starkey, Vera A. White, Alma W. Morton, Lee J. Myers.

Ideal Garage Co., New Philadelphia, \$20,000. B. L. Thomas, Christ Knecht, H. G. Gibbe, C. B. Knisely, J. C. Mitchell.

Accurate Auditing and Accounting Co., Akron, \$5,000. C. A. Hukamp, Herbert Steckel, Carl H. Schwartz, J. E. Jenkins, Thelma Cox.

Paragon Electrical Manufacturing Co., Akron, \$10,000. M. Moskovitz, E. Kail, H. Friedman, Henry Fuerst, Sarah Moskovitz.

Morris-McAvey Co., Cleveland, \$10,000. Lyle K. Leroy, Charles A. Hyde, T. N. Charlotte, Marie McMahon, J. R. Morris.

Service Lumber Co., Akron, \$50,000. I. J. Coldston, A. L. Wahn, John A. McAlenan, R. F. Kelley, C. W. Grant.

Walker Motor Co., Cleveland, \$300,000. J. William De Cumbe, J. M. Hawkins, B. R. Hollister, J. H. Bedell, Gertrude Charvot.

Consumers' Printing and Paper Co., Cincinnati, \$3,000. C. C. Biehle, Ed. J. Biehle, Joseph Biehle, F. E. Mestermacher, Irene R. Biehle.

Williams-Murphy Co., Cleveland, \$10,000. Donald McBride, A. B. Williams, J. N. Murphy, E. N. Mathews, T. E. Borton, S. F. Maseret, Will Rounds.

Millersburg Equity Exchange Co., Millersburg, \$40,000. Homer Doty, J. R. Haspeter, J. K. Millet, B. F. Snyder, B. B. Finney.

Wilkey Machine and Manufacturing Co., Akron, \$50,000. Carl A. Wilkey, J. R. Hoffman, T. W. Kimber, Ella L. Brooks, L. M. Russell.

Goldberg Realty Co., Columbus, \$50,000. I. S. Goldberg, Harry Goldberg, W. H. Overman, A. Goldberg, Arthur Goldberg.

Ohio Willite Road Construction Co., Lima, \$10,000. M. O'Brien, Catherine O'Brien, S. K. Spellacy, Jane S. Tait, John C. Tait.

North American Fibre Products Co., Cleveland, \$1,000. Clayton C. Townes, Boyd Comstock, A. W. Thomas, Milton C. Portmann, M. H. Krueger.

Imperial Fibre Products Co., Cleveland, \$1,000. Raymond L. Davis, Fred F. Klingman, M. R. Burnage, M. A. Sellberg, H. E. Hibbets.

East End Auto To pand Painting Co., Cleveland, \$10,000. A. F. Brown, Jason W. Pulford, Cora Pulford, Chas. Clark, Matilda Clark.

Fire Equipment and Marine Supply Co., Cleveland, \$15,000. A. M. Barnes, R. C. Barnes, R. M. Barnes, J. F. Schuerger, C. B. Myers.

Co-operative Manufacturing Co., Columbus, \$51,250. R. C. Hyre, R. E. Hyre, W. C. Kusley, Edith Lawrence, William Davis.

Premier-Drug Sales Co., Akron, \$20,000. J. E. Bergmann, Al Bergmann, George C. Zinn, Lee J. Myers, Alma W. Morton.

Rigling Realty Co., Hamilton, \$200,000. W. Rigling, Frank W. Kritsch, Albert Hossfeld, George Sohngen, Henry Wendelkin.

Laughaar Ball Bearing Co., Cincinnati, \$100,000. R. E. Simmonds, Jr., W. J. McCauley, K. Anderson, W. Thompson, Jacob Schmitt.

American Storage Warehouse Co., Cleveland, \$50,000. J. C. White, R. W. Bradway, F. B. Cummings, T. P. Mahon, N. L. White.

Kindt-Collins Co., Cleveland, \$50,000. E. T. Knidt, J. T. Sweeny, A. H. Piebach, R. J. Sachs, M. Sainsbury.

Mansfield City Club Co., Mansfield, \$100,000. T. H. Barnes, E. S. Nail, C. F. Alexander, H. S. Black, A. E. McLean.

W. H. Collier Co., Cleveland, \$10,000. M. B. Howells, Claude W. Shimon, D. Sharpe, Harry C. Cohn, R. E. Hyde.

Federal Foundry Co., Canton, \$25,000. Clarence N. Converse, I. A. Converse, Frank A. Peter, A. M. Peter, Russell J. Burt.

Labor Temple Co., Cincinnati, \$25,000. John Joseph Mara, Michael E. Byrne, George Arndt, Mathias Menges, Mollie E. Weitler.

Commercial Body Co., Columbus, \$10,000. Charles W. Finch, Albert M. Lupton, Clarence R. Benner, William J. C. Erwin.

Oakwood Oil Co., Dayton, \$25,000. Frank Joseph Kramer, E. H. Stewart, Jr., Franklin A. Shroyer, David R. Bussdicker.

United States Postal Fire Insurance Co., Cincinnati, \$100,000. F. R. Galoway, Fred L. Hoffman, J. W. Garfunkle, Wm. Bahmann, Frank J. Zumstein.

Enterprise Sash & Door Co., Cleveland, \$10,000. E. H. Golding, A. C. Wald, E. L. Parkin, E. M. Boltz, M. R. Burrige.

Jackson Industrial Co., Cincinnati, \$500,000. H. B. Jackson, H. J. Lease,

Alva Tyler, Walter L. Thorne, Chas. J. Thorne.

McDonald-Ganyard-Miller Co., Akron, \$10,000. F. W. Ganyard, J. T. Miller, Frank McDonald, Amos N. Englebock, C. Blake McDowell.

State Road Coal Co., Akron, \$10,000. John A. Brittain, Robert J. Coleman, W. L. Hart, Karl N. Gibbons, Carl C. Chisnell.

Ochs Motor Car Co., Fremont, \$20,000. C. E. Ochs, R. J. Krugh, E. S. Forsythe, R. P. Hershey, A. C. Solomon.

Utility Storage Battery Co., Cleveland, \$40,000. S. M. Weir, P. A. Devory, B. Kornfeld, P. H. Cassidy, H. P. Ball.

Brazenweld Co., Cleveland, \$75,000. Louis Bloomfield, Melville W. Vickery, F. D. McCullough, Charles A. Jilek, A. M. McNally.

George W. Quarm Co., Cleveland, \$30,000. George W. Quarm, Angelo Palermo, George V. Hoffman, Eli M. Doster, Thomas J. Farrow, Thomas Catalano.

Nineteen Thirty-Eight Euclid Co., Cleveland, \$30,000. J. M. Berne, J. M. Ulmer, B. D. Gordon, E. L. Mueller, A. J. Schanfarber.

Zanesville Bank & Trust Co., Zanesville, \$150,000. G. M. Wendell, E. F. O'Neal, John H. Garrett, E. A. Wilson, C. E. Zimmer.

Lake Erie Foundry Co., Painesville, \$50,000. H. E. Wade, L. H. DeForest, Maude C. Price, Fred M. Tyus, C. A. Newport.

Eastern Realty Co., Columbus, \$10,000. William C. Park, L. R. Haag, John W. Wilson, R. M. Barrett, E. Terry.

Carroll Automobile Co., Lorain, \$250,000. A. E. Cameron, T. C. Metzger, E. G. Heckley, E. P. Reidy, S. J. Wirts.

A. B. Rim Co., Spencer, \$100,000. C. R. Aldrich, George G. Bouthinon, M. M. Aldrich, M. A. Bouthinon, H. Costello.

New Erie Equity Exchange Co., New Paris, \$50,000. J. W. Noakes, Harry W. Bragg, C. R. Coblentz, John W. Cook, Alfred J. Murray.

L. N. Lawrence Co., Akron, \$10,000. D. T. Lawrence, R. B. Lawrence, W. M. Jennings, J. B. Lawrence, L. N. Lawrence.

Kolb Baking Co., Akron, \$5,000. O. C. Bentz, Samuel Stanson, Herman Freed, W. E. Snyder, Helen L. Gault.

Hazelett Storage Battery Co., Cleveland, \$6,000. C. W. Hazelett, C. B. Weaver, H. O. Runkle, Albert Pike, Harold T. Clark.

Cleveland Plumbing Co., Cleveland, \$10,000. A. L. Mitchell, W. S. Rymer, Robert P. King, H. B. Mallette, J. M. Hellen.

Photo Service Shop Co., Cincinnati, \$1,000. Ada B. Egolf, Jennie E. Grant, Charles F. Egolf, Edw. C. Grant, R. L. Modlin.

Henderson-Jappe Co., Cleveland, \$10,000. I. Groham, P. Kuererle, S. I. Powell, J. C. Frederick, M. L. Harrington.

Bomgardner Mfg. Co., Cleveland, \$10,000. Carl Bomgardner, Otie Bomgardner, Homer P. Bomgardner, Mila C. Leuthold, Kizzie Bomgardner.

Lowery-Quinn-Carter Co., Cleveland, \$200,000. E. B. Wickham, E. P. Westenhaber, M. L. TeLocken, H. E. Werner, A. L. Welch.

Leamon Petroleum Products Co., Wooster, \$66,000. Fenwick Ewing, E. E. Smith, Freeman T. Eagleson, Boyd B. Haddox, W. Warren Madden.

Service Fuel Co., Cleveland, \$15,000. James M. McSweeney, G. M. Breen, B. W. Henderson, Thomas H. Garry, N. B. Snaveley.

Edwards Dairy Co., Toledo, \$12,000. George W. Ritter, Lee H. Schminck, M. M. McGowan, V. Barnes, R. E. Lay.

Electric Alloy Steel Co., Youngstown, \$1,500,000. James A. Campbell, Louis J. Campbell, Azael E. Adams, Leroy A. Manchester, Cecil D. Hine.

R-H Elkhorn Coal Co., Cincinnati, \$50,000. J. M. Hamilton, B. E. Richards, George V. Richards, F. F. Bayles, Willis E. Doll.

Ohio Tobacco Products Co., Bedford, \$25,000. R. B. Oliver, L. E. Smith, Garrett Stevens, F. W. Poulson, C. J. Pilliod, Jr.

Malay Rubber Co., Cleveland, \$1,500,000. E. B. Underhill, Samuel D. Dodge, J. R. Vaughan, F. G. Behringer, R. H. Parker.

Universal Engineering & Electric Co., Canton, \$50,000. B. H. Greene, L. M. Ripple, L. J. Geisler, M. Steeger, H. W. Black.

Lakewood Seed Co., Lakewood, \$10,000. Fred Nowell, Joseph Libal, A. W. Heinrich, Walter A. Heinrich, Arthur R. Amacher.

P. F. Ryan Co., Cleveland, \$10,000. A. J. Pejna, L. M. Sewell, E. W. Mc-

Graw, Harry L. Deibel, Gilbert E. Morgan.

W. H. Kiefaber Co., Dayton, \$200,000. Warner H. Kiefaber, Harry C. Kiefaber, Eugene C. Kennedy, Harry J. Kiefaber, Frank R. DeWeese.

American Bisque Co., Columbus, \$25,000. W. S. Eberle, Daniel E. Stuber, King McCreery, Charles R. Snyder, A. W. Ridge.

Dayton Appliance Co., Dayton, \$25,000. J. Q. A. Johnson, Jr., H. A. Estabrook, B. D. Moore, J. B. Coolidge.

Cincinnati Beveling Co., Cincinnati, \$5,000. Rene L. Brassine, Frank C. Slatz, Jr., Sam Krasnitzke, Hilda Held.

Homade Fried Cake Co., Cleveland, \$15,000. C. M. Emerson, B. K. Emerson, E. K. Curtis, George J. Myers, J. Paul Thompson.

Mohr Bros. Bottling Co., Toledo, \$10,000. Edw. Mohr, William N. Mohr, Henry C. Mohr, James L. Faurot, Alton S. Mohr.

Cleveland Drop Forge Co., Cleveland, \$750,000. I. W. Sharp, H. S. Brady, S. C. Smith, H. P. Baker, A. Cullen.

Columbus Gas Engine & Machine Co., Columbus, \$10,000. C. P. Reading, E. G. Fetherlin, Joe Fahy, Gustave A. Nuesse, Frank J. Lang.

N. Valerio Co., Cincinnati, \$200,000. Nick Valerio, Rudolph Bottler, Glancinto Valerio, Perry M. Abercrombie, Armando Valerio, Philip Bottler.

Mansfield Milling Co., Mansfield, \$200,000. L. C. Chase, F. N. Barton, L. T. Witbeck, A. A. Arnold, Lewis Brucker.

H. C. Lee & Sons Co., Toledo, \$50,000. Henry C. Lee, Mano R. Lee, Ross L. Lee, Edman H. Lee, Selwyn D. Lee.

Jewel Brass Mfg. Co., Cleveland, \$35,000. Sidney N. Weitz, Marc J. Grossman, Irwin N. Loeser, Harry Pott, Fred B. Fishman.

Summit Office Building Co., Akron, \$1,000. H. F. Tallon, D. W. Maxon, A. W. Doyle, E. J. Larson, R. I. Moore.

Johnny Kilbane Tire Co., Cleveland, \$10,000. Johnny Kilbane, James M. Nally, Michael Crealis, Martin Nally, Ralph L. Bailey.

Co-Operative Stores Co., Toledo, \$20,000. Irvin E. Austin, Clifton C. Kerr, Orris S. Brown, Clarence E. Valentine, Harry M. Curtis, Charles C. Sterner.

Increases

Williamson Hydraulic Clutch Co., Columbus, \$900,000 to \$1,500,000.

North Carolina Farms Co., Columbus, \$1,000 to \$6,000.

City Trust & Savings Bank, Dayton, \$100,000 to \$200,000.

Martin Steel Products Co., Mansfield, \$100,000 to \$800,000.

Federal-Mortgage Co., Cleveland, \$50,000 to \$1,000,000.

North Park Development Co., Warren, \$50,000 to \$500,000.

King Machine Tool Co., Hamilton, \$300,000 to \$600,000.

Banting Mfg. Co., Toledo, \$400,000 to \$1,000,000.

Colonial Iron Works Co., Cleveland, \$25,000 to \$50,000.

Toledo Tap & Die Co., Toledo, \$95,000 to \$125,000.

M. E. Leitner Cloak Co., Cleveland, \$30,000 to \$75,000.

Reitz Bros. Co., Portsmouth, \$50,000 to \$200,000.

Warner Milling Co., Warner, \$10,000 to \$12,000.

Pistolite Mfg. Co., Cincinnati, \$10,000 to \$50,000.

Moor Realty Co., Columbus, \$50,000 to \$200,000.

Goodyear Oil & Gas Co., Columbus, \$5,000 to \$100,000.

City Banking Co., Kent, \$50,000 to \$100,000.

Amazon Rubber Co., Akron, \$400,000 to \$1,500,000.

Gessner Co., Toledo, \$20,000 to \$40,000.

Cardinal Phonograph Co., Newark, \$10,000 to \$800,000.

Union Mortgage Co., Cleveland, \$2,500,000 to \$3,700,000. Preferred stock.

Union Mortgage Co., Cleveland, \$2,000,000 to \$2,600,000. Common stock.

Campfield-Hickman Co., Barberton, \$50,000 to \$150,000.

Lucius Mfg. Co., Massillon, \$100,000 to \$500,000.

Columbia Tire & Rubber Co., Columbiana, \$300,000 to \$800,000. Preferred.

Stuver Bros. Co., Kenmore, \$50,000 to \$150,000.

A. Nash Co., Cincinnati, \$80,000 to \$90,000.

Medina Farmers' Exchange Co., Medina, \$25,000 to \$50,000.

Akron Cycle & Supply Co., \$10,000 to \$30,000.

Falls Lumber Co., Cuyahoga Falls, \$12,000 to \$200,000.

Carter-Leet Lumber Co., Mansfield, \$20,000 to \$30,000.

Columbia Tire & Rubber Co., Columbiana, \$500,000 to \$1,000,000. Common.

Commercial Forgings Co., Cleveland, \$15,000 to \$20,000.

E. A. Kinsey Co., Cincinnati, \$300,000 to \$450,000.

Cleveland Rubber Mold, Foundry & Machine Co., Cleveland, \$1,000,000 to \$2,000,000.

Casparis Stone Co., Columbus, \$500,000 to \$1,000,000.

L. C. R. Storage Co., Dayton, \$20,000 to \$100,000.

W. F. Gammeter Co., Cadiz, \$1,000 to \$100,000.

Management, Engineering and Development Co., Dayton, \$100,000 to \$500,000.

Edon Farmers' Co-Operative Co., Edon, \$10,000 to \$20,000.

Dayton Buick Motor Co., Dayton, \$10,000 to \$150,000.

City Ice & Coal Co., Massillon, \$150,000 to \$300,000.

Acorn Supply Co., Toledo, \$50,000 to \$100,000.

Athens Co-Operative Co., Athens, \$1,000 to \$20,000.

Stark Lumber Co., Canton, \$25,000 to \$100,000.

Lorain County Finance Co., Lorain, \$25,000 to \$75,000.

Herman Timberg Producing Co., Cincinnati, \$30,000 to \$60,000.

Knight-Norris-Gibbs Co., Cleveland, \$30,000 to \$100,000.

Irving Coal Co., Bellaire, \$20,000 to \$60,000.

DeVoe Grocery Co., Warren, \$80,000 to \$250,000.

Beckman Co., Cleveland, \$200,000 to \$750,000.

Consumers' Ice Co., Sandusky, \$60,000 to \$120,000.

Consumers' Ice Co., Sandusky, \$60,000 to \$120,000.

Wyeth-Scott Co., Newark, \$16,000 to \$50,000.

Decrease

Janet Chocolate Co., Cincinnati, \$10,000 to \$5,000.

J. S. Wilson, Cleveland, \$75,000 to \$7,500.

Wise-McClung Mfg. Co., New Philadelphia, \$200,000 to \$109,500.

Wilcox Building Co., Painesville, \$30,000 to \$15,000.

Klein Iron Works Co., Bellevue, \$50,000 to \$30,000.

PUBLIC UTILITIES COMMISSION

No. 1874—In the Matter of the Application of The West Millgrove Gas & Oil Company for Authority to Issue \$10,000.00 Common Capital Stock. Prayer Granted.

(Dated January 9, 1920)

This day this matter came on for final consideration upon the application of The West Millgrove Gas & Oil Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission, (1) for the issue, on or about October 1st, 1919, of its common capital stock of the par value of four thousand, five hundred dollars, which was delivered to The Whitman & Chilcote Brothers in full and final payment of the consideration for the public utility purchased of them, and (2) for the issue and sale of additional common capital stock of the par value of five thousand, five hundred dollars, the proceeds to be used for the provision of additions, extensions and improvements to applicant's property.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the property so acquired from The Whitman and Chilcote Brothers is reasonably worth the sum of four thousand, five hundred dollars, and that the issue of applicant's capital stock of that par value and the money to be procured thereby are reasonably required and necessary for the acquisition of property, to be used and useful for the convenience of the public in the prosecution of applicant's corporate purposes, and is satisfied that consent and authority should now be granted for the issue and disposition of applicant's said capital stock of that par value. It is, therefore,

Ordered, That said The West Millgrove Gas and Oil Company be, and hereby it is authorized to issue its common capital stock of the par value of four thousand, five hundred dollars (\$4,500.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be used to pay the consideration for the property acquired by applicant from The Whitman and Chilcote Brothers, formal approval of which was granted by the order this day made and entered in proceeding No. 1873, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further.

Ordered, That the finding as to the value of applicant's property, hereinbefore set forth, shall not be binding upon this Commission in any future proceeding involving the matter of rates.

And it appearing that the applicant has not submitted to the commission any definite program for the expenditure of the proceeds of said additional capital stock, it is further

Ordered, That said application of The West Millgrove Gas and Oil Company to issue \$5,500.00 additional common capital stock be, and hereby it is dismissed, without prejudice to any future application which said company may make for authority to capitalize definitely estimated additions and extensions to its facilities.

✽

1870—In the Matter of the Application of The Sheriff Street Market and Storage Company to Issue and Sell Capital Stock. Prayer Granted.

-(Dated January 7, 1920.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Sheriff Street Market and Storage Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent and authority of this Commission to issue and dispose of additional common capital stock of the par value of one million dollars, the proceeds arising from the sale thereof to be used to purchase land adjoining applicant's present plant, which will cost about \$180,000.00, and to erect thereon a cold storage warehouse, the cost of which has been estimated at the sum of \$700,000.00 and to provide additional working capital.

Upon consideration whereof, and being fully advised in the premises, the Commission finds:

That the applicant now has in contemplation the provision of additions to its facilities, the cost of which will be in the neighborhood of \$880,000.00, and that the maintenance of applicant's service will require the expansion of its working capital to the extent of some \$40,000.00, and

That the issue of applicant's common capital stock of the par value of \$1,000,000.00 is reasonably required, and the money to be procured thereby necessary for the aforesaid capital purposes,

and is satisfied that consent and authority for the issue and disposition of said additional common capital stock should be granted. It is, therefore,

Ordered, That said The Sheriff Street Market and Storage Company be, and hereby it is authorized to issue its common capital stock of the par value of one million dollars (\$1,000,000.00), and that said capital stock be sold for the highest price obtainable, but not less than ninety (90) percentum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said capital stock be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the construction, completion, extension and improvement of applicant's facilities, as follows, to-wit:

(1) The acquisition of land adjoining its present facilities, at cost of some \$180,000.00;

(2) The erection and equipment of a twelve-story cold storage warehouse, some one hundred and eighty feet in width, and one hundred and ninety feet in depth, thereupon, and

(3) The expansion of applicant's working capital by the remainder of such proceeds after the payment for the aforesaid warehouse, the cost of which is now estimated at the sum of \$700,000.00,

nor shall said proceeds be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to the Commission semi-annually, within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

1862—In the Matter of the Application of The Twin Valley Light and Power Company for Consent and Authority to Issue Capital Stock. Prayer Granted.

(Dated January 8, 1920.)

This day this matter came on for consideration upon the application of The Twin Valley Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio, with its principal office at West Alexandria, Preble County, Ohio), asking that this Commission do now formally consent to and approve the issues and disposition, at various times since July fifth, 1916, common capital stock of the par value of three thousand, one hundred dollars, the proceeds of which were expended in the construction of applicant's system for the distribution of electrical energy to consumers thereof:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the applicant heretofore and since the fifth day of July, 1916, has issued and sold, for the par value thereof, common capital stock of the par value of three thousand, one hundred dollars, the proceeds of which capital stock were actually expended in the purchase of materials and the construction of applicant's system for the distribution of electrical energy to consumers thereof, and that the issue of said capital stock was reasonably required and the money procured thereby necessary for the aforesaid construction of applicant's facilities, and is satisfied that, in so far as it has the authority so to do, it should now formally consent to and approve the issue and disposition of applicant's capital stock. It is, therefore,

Ordered, That, in so far as this commission has the authority so to do, it does now and hereby formally consent to and approve the issue and disposition, since July fifth, 1916, of three thousand, one hundred dollars (\$3,100.00), par value, of the common capital stock of The Twin Valley Light and Power Company, the proceeds from the sale of which, at the par value thereof, were expended in the purchase of material and the construction of applicant's system for the distribution of electrical energy.

1835—In the Matter of the Joint Application of The Andover Electric Telephone Company and The Jefferson and Warren Telephone Company for the Purchase of a Line of Poles. Prayer Granted

(Dated December 20, 1919,)

This day this matter came on for consideration upon the joint application of The Andover Electric Telephone Company and The Jefferson and Warren Telephone Company, (corporation duly organized and existing under and by virtue of the laws of Ohio, asking the consent to and approval, by this Commission of the sale, by said The Jefferson and Warren Telephone Company and the purchase, by said The Andover Electric Telephone Company, of a certain pole line and circuits thereupon maintained, extending some fourteen miles in the County of Ashtabula, State of Ohio, from the center of Williamsfield Township north to West Andover, and thence west a distance of nine miles to what is known as Miller's Corners on the center road between New Lyme and Jefferson, Ohio:

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding that the convenience of the public will be promoted by such sale and purchase of property and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for the said sale and purchase of property should be granted. It is, therefore,

Ordered, That said The Jefferson & Warren Telephone Company be, and hereby it is authorized to sell and convey to The Andover Electric Telephone Company the pole line and circuits appurtenant thereto, more particularly described in a certain bill of sale, a copy of which, filed herein as "Exhibit A," which exhibit, in so far as it describes said property hereby is made a part of this order by reference; and said The Andover Electric Telephone Company hereby is authorized to purchase and acquire the said prop-

erty and to pay therefor the agreed consideration of \$200.00. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service, by said companies, nor shall the finding hereinbefore set forth, as to rates and service be binding upon this commission in any future proceeding involving said matters.

*

No. 1712—In the Matter of the Petition of The Grand Rapids Mutual Telephone Company and The Crescent Telephone Company for Such Consent and Approval as May be Necessary to Permit Them to Respectively Purchase and Sell Certain Telephone Property and to Enter Into Contracts with Each Other That Will Enable Them to Interchange Toll Business. Prayer Granted.

(Dated December 19, 1919.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of The Grand Rapids Mutual Telephone Company and The Crescent Telephone Company, (corporations duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this commission, of the sale by said The Crescent Telephone Company and the purchase by said The Grand Rapids Mutual Telephone Company, of the property of said The Crescent Telephone Company situated in and about the village of Grand Rapids, Ohio, and, further, to the making, by said applicants, of certain contracts providing for the establishment of a physical connection between the respective systems of the applicants and the interchange of toll service thereby:

And the commission having heretofore found and ascertained the valuation of the several kinds and classes of property of the applicants, used and useful for the convenience of the public in the furnishing of telephonic service in and about the village of Grand Rapids, Ohio, and of said property as a whole, upon which rates, tolls, charges and rentals are to be based, and notice of such valuation having been duly given to said applicants and the Mayor of Grand Rapids, Ohio, by registered letter, as provided by law; and it appearing that the consolidation of applicants' properties in said territory will promote the public convenience, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll of charge therefor, the commission is satis-

fied that its consent and authority for such purchase and sale of property, and for the establishment of a physical connection between the applicants' systems and the interchange of service thereby should be granted.

And the commission further finds and determines the following rates, rentals, tolls and charges for the furnishing of telephonic service in and about the village of Grand Rapids, Ohio, by The Grand Rapids Mutual Telephone Company as the sole owner and operator of the telephonic facilities within said territory, to be just and reasonable, to-wit:

Private lines	\$2.00 per month, net
Two-party lines	1.25 per month, net
Four-party lines	1.00 per month, net

It is, therefore,

Ordered, That said The Crescent Telephone Company be, and hereby it is authorized to sell and convey to The Grand Rapids Mutual Telephone Company, its exchange property situated in and about the village of Grand Rapids, Ohio, as more fully described in a statement marked "Exhibit A" appended to the application herein, which hereby is made a part of this order by reference and said The Grand Rapids Mutual Telephone Company hereby is authorized to purchase the same and consolidate it with its existing facilities in said territory. It is further

Ordered, That upon the acquisition of the aforesaid property, said The Grand Rapids Mutual Telephone Company may establish, maintain, impose and collect rates and charges for the furnishing of local exchange service in the village of Grand Rapids, Ohio, not in, which hereby is made a part of this order by reference: and mined to be just and reasonable. It is further

Ordered, That said applicants be, and hereby they are authorized to establish a physical connection between their respective systems and to interchange toll service thereby. It is further

Ordered, That said applicants forthwith file with this commission schedules providing for their respective withdrawal from and inauguration of local service within the territory now served by means of the property hereinbefore authorized to be sold and purchased, and other schedules of rates and charges for such interchanged toll service. It is further

Ordered, That the finding of the commission in relation to the service of said applicants shall not be binding upon this commission in any future proceeding regarding said subject.

No. 1890—In the Matter of the Petition of Central Union Telephone Company and The Bergholz Telephone Company for Such Consent and Approval of the Commission as May be Necessary to Permit Them to Respectively Purchase and Sell Certain Telephone Property and to Enter Into Contracts With Each Other That Will Enable Them to Interchange Toll Business. Prayer Granted.

(Dated January 9, 1920.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of the Central Union Telephone Company, (a corporation duly organized under the laws of Illinois and authorized to do business in the State of Ohio), and The Bergholz Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this commission, of the sale, by said The Bergholz Telephone Company, and the purchase by the said Central Union Telephone Company, of the local exchange property of said The Bergholz Telephone Company in and about the villages of Magnolia and Waynesburg, Ohio, and, further, to the making, by said applicants, of certain contracts providing for the establishment of a physical connection between the respective systems of the applicants and the interchange of toll service thereby.

And the commission having heretofore found and ascertained the valuation of the several classes and kinds of property of the applicants used and useful for the convenience of the public in the furnishing of telephonic service in and about the villages of Magnolia and Waynesburg, Ohio, and of said property as a whole, upon which rates, tolls, charges and rentals are to be based, and notice of such valuation having been duly given to said applicants and the mayors of said villages by registered letter, as provided by law, and it appearing that the consolidation of applicants' properties in said territory will promote the public convenience, and that the public thereby will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, the commission is satisfied that its consent and authority for such sale and purchase of property, and for the establishment of a physical connection between the applicants' systems and the interchange of service thereby, should be granted.

The commission further finds and determines the following rates, rentals, tolls and charges for furnishing telephonic service

within the territory served by means of said property, in view of the fact that upon the consolidation of said property of the Bergholz Telephone Company with its existing property, the Central Union Telephone Company will enlarge the free service areas of Magnolia and Waynesburg to include the other and the area now maintained for the City of Canton, Ohio, providing each station in said villages with connection and service, for the exchange rental, to approximately seven thousand other stations, to be just and reasonable, to-wit:

(a) Pending the unification of said properties, the rates, charges, rentals and tolls now maintained by the applicants;

(b) Upon the unification of said properties, as solely owned and operated by the said Central Union Telephone Company and the expansion of the free service areas for the villages of Magnolia and Waynesburg to include each other and the free service area now maintained for the City of Canton, Ohio, the following rates and charges, to-wit:

Business—Individual line	\$36.00 net per year
Two-party line	30.00 net per year
Residence—Individual line	30.00 net per year
Two-party line	24.00 net per year
Rural—Business	30.00 net per year
Residence	24.00 net per year
Extension—Business	12.00 net per year
Residence	6.00 net per year

It is, therefore,

Ordered, That said The Bergholz Telephone Company be, and hereby it is authorized to sell and convey to the Central Union Telephone Company, the exchange property in and about the villages of Magnolia and Waynesburg, Ohio, as more fully set out and described in a statement marked "Exhibit A" appended to the application herein, which hereby is made a part of this order by reference; and the said Central Union Telephone Company hereby is authorized to purchase and acquire the same and consolidate it with its present facilities. It is further

Ordered, That upon the acquisition of said property and before the unification thereof, the said Central Union Telephone Company may impose, charge and collect for furnishing telephone service within the territory now served by means of said property and its facilities, rates not in excess of the rates first hereinbefore found and determined by this commission to be just and reasonable, and, upon the unification of said properties and the expansion of the

free service areas as hereinbefore provided, rates not in excess of the rates lastly hereinbefore found and determined to be just and reasonable. It is further

Ordered, That said applicants be, and hereby they are authorized to establish a physical connection between their respective system and to interchange toll service thereby. It is further

Ordered, That said applicants forthwith file with this commission schedules providing for their respective withdrawal from and inauguration of local service within the territory now served by means of the property hereinbefore authorized to be sold and purchased, and other schedules of rates and charges for such interchanged toll service. It is further

Ordered, That the finding of the commission in relation to the service of said applicants shall not be binding upon this commission in any future proceeding regarding said subject.

ATTORNEY GENERAL

County Commissioners Are by Virtue of Sections 2421 and 7557, General Code, Under the Duty of Keeping in Repair Those Necessary Bridges Within the Cities of the State Which Are Over Streams and Public Canals on State and County Roads, Free Turnpikes, Improved Roads, Abandoned Turnpikes and Plank Roads in Common Public Use; and They are Under a Like Duty to Similar Bridges Within Those Villages Which do not Demand and Receive a Portion of the Bridge Fund as Authorized by Section 2421-1 General Code (108 O. L. 259). If a Village Does Demand and Receive a Portion of the Bridge Fund From the County, Then the Village is Under the Duty of Maintaining Such of the Bridges Mentioned as are Wholly Within the Village. Municipal Corporations, Both City and Villages, are Under the Duty of Maintaining Bridges on Streets Established by the City or Village for the Use and Convenience of the Municipality and not a Part of a State Road, County Road, Free Turnpike, Improved Road, Abandoned Turnpike or Plank Road.

No. 900—(Opinion Dated December 24, 1919)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: The receipt is acknowledged of your letter calling attention to a communication of your department to the city auditor of Lima, Ohio, wherein, after referring to an opinion of this department of date October 28, 1910, on the subject of the right of cities to receive from counties a portion of the bridge fund, you expressed the view that under Section 2421 General Code, the commissioners of the county would have to keep in repair bridges within cities.

You state that exception has been taken to your views in this connection, and you are therefore led to submit to this department the question: "Are bridges within a municipality to be maintained by the county or municipality?"

You say in connection with your inquiry that certain municipalities are without funds to maintain the bridges within the municipality, and that the county in most cases has heretofore taken care of the repair and upkeep.

Section 2421 reads as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners."

As was pointed out in said opinion of this department dated October 28, 1910, and found in Annual Report of Attorney General for 1910-1911 at page 781, former Section 2824 of the Revised Statutes which made provision that certain cities might receive part of the bridge fund from the county, was omitted from the new General Code of 1910, in so far as it made such provision.

The statutes so far as such omission is concerned remained in the same form as pointed out in said opinion until the present year when on April 16, 1919, Section 2421-1 was enacted as appears in 108 O. L., 259.

However, your question will first be considered without reference to said supplementary section, and the latter section will be then discussed.

The real intent and meaning of said Section 2421 as it has existed without any accompanying provision of statute permitting cities and villages to demand and receive part of the bridge fund from the county is made plain by the opinion of our Supreme Court in the case of *City of Piqua vs. Geist*, 59 O. S., 163. As passed on in that case, the section in question was known by its old number, Section 860 R. S., and while some slight verbal changes have been since made, the statute for present purposes was substantially the same when passed on by the Supreme Court as it is now. The purport of the opinion of the Supreme Court in the case referred to is fully shown by the syllabus, reading as follows:

"Under the amendment made February 8, 1894, of Section 860, Revised Statutes (91 Laws, 19), county commissioners are not required to construct and keep in repair bridges over natural streams and public canals, on streets established by a city or village for the use and convenience of the municipality, and not a part of a state or county road, though the city or village receive no part of the bridge fund

levied on the property within the same. It is the duty of the city or village to construct and keep in repair such bridges, and is liable in damages to one injured by its neglect to do so."

The Supreme Court in arriving at the conclusion just set out did not find it necessary to go beyond the terms of the statute itself. However, support is lent to the view of the court by the fact that there are found in the Municipal Code provisions relating to bridges, in substance as follows: By Section 3677 municipal corporations have power to appropriate real estate for bridges, aqueducts, viaducts and approaches thereto; by Section 3629 they have power to improve, keep in order and repair, light, clean and sprinkle bridge and viaducts within the corporation; by Section 3939 they have power to issue bonds for the purpose of procuring real estate and right of way for viaducts, bridges and culverts, and for the purpose of constructing them; by Section 4325 the duty of supervising the improvement and repair of bridges viaducts and aqueducts is in cities charged upon the directors of public service, and by Section 4364 is in villages charged upon the street commissioner or engineer, under the direction of council.

Section 7557 General Code reads:

"The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities not having the right to demand and receive a portion of the bridge fund levied upon property within such corporations, on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plank roads, which are of general and public utility, running into or through such village or city."

This section is practically the same as Section 2421, so that what has been said as to the latter section applies to the former.

Previous to the enactment of the General Code of 1910, as has been stated, Section 2824 was in effect providing in substance that a number of cities throughout the state might receive from the county a portion of the bridge tax. Said Section 2824 was held constitutional in the case of *State ex rel. Cline v. Wright, Auditor*, 9 N. P. (N. S.), 321. The theory of the opinion in that case seems to be that Section 2824 was not special legislation in the sense of conferring corporate power, but on the contrary constituted a mere agency through which the money thus received was to be expended, and that in constituting such agency it was

within the power of the legislature to consider local conditions in authorizing certain cities to receive a portion of the bridge fund.

We are thus brought to said Section 2421-1, reading as follows:

"When the council of any city having a population not exceeding fifteen thousand or of a village shall cause to be filed in the office of the county auditor of the county in which such corporation is situated in whole or in part a certified copy of a resolution of such council demanding some portion of the county bridge fund levied upon property within such corporation, the county commissioners of such county may, by resolution, authorize the county auditor to draw his warrant upon the county treasurer in favor of such corporation for not to exceed sixty per cent. of the county bridge fund then levied or collected, or in process of collection, upon the property in such corporation. Such fund so received by such corporation shall be used by it for the construction, repair and maintenance of any bridges and viaducts within such corporation.

It is to be noted that this section does not purport to be based upon local conditions, but is a general enactment applying to all villages in the state, and to all cities having a population not exceeding 15,000. Hence, even if the theory underlying the opinion in the case last cited is correct, it would seem to have no application to said Section 2421-1. But in any event the case was decided before the adoption of the constitutional amendments of 1912. Our Supreme Court has recently held in the case of the City of Elyria v. Roy F. Vandemark, Ohio Law Reporter for December 15, 1919, at page 379, as shown by the second and third paragraphs of the syllabus, as follows:

"2. The constitution of the state having classified municipalities on a basis of population, the legislature is without authority to make further classification thereof for the purpose of legislation affecting municipal government.

3. The provisions of Section 4250, General Code, as amended 106 O. L., 483, purporting to authorize the council in cities having a population of less than twenty thousand to merge the office of director of public safety with that of the director of public service, are in conflict with the provisions of Section 1, Article XVIII of the constitution of Ohio."

The principles embodied in these two paragraphs of the syllabus would seem to have full application to said Section 2421-1. It is true that the latter section does not relate to broad govern-

mental functions nor to the organization of municipal government, and yet it does purport to confer upon certain cities power to take municipal action which is not granted to other cities, and in that sense is "legislation affecting municipal government." Therefore, it must be concluded that said Section 2421-1 is unconstitutional as applied to cities.

The same thing may not be said of it as applied to villages; for it has long been a rule of statutory construction in Ohio that "in construing statutes the rule is to enforce them so far as they are constitutionally made, rejecting only those provisions which show an excess of authority by the enacting power." (*Cincinnati v. Bryson*, 15 O., 625-645.) See also *Bowles v. State*, 37 O. S., 35. The form of Section 2421-1 is hardly such as to lay it open to the objection that the unconstitutional provisions in it are so interwoven with the other provisions as to be inseparable, or to the further objection that the whole statute taken together warrants the belief that the legislature would not have passed the valid portions alone. For these reasons, then, and inasmuch as the legislature may constitutionally provide that all villages have the right to demand and receive a portion of the bridge fund, there is no reason for believing the statute unconstitutional so far as it concerns villages.

In conformity with the foregoing, the answer to your question is as follows:

(1) County commissioners are by virtue of Sections 2421 and 7557 under the duty of keeping in repair those necessary bridges within the cities of the state which are over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use; and they are under a like duty as to similar bridges within those villages which do not demand and receive a portion of the bridge fund as authorized by Section 2421-1 (108 O. L., 259). If a village does not demand and receive a portion of the bridge fund from the county, then the village is under the duty of maintaining such of the bridges mentioned as are wholly within the village.

(2) Municipal corporations, both cities and villages, are under the duty of maintaining bridges on streets established by the city or village for the use and convenience of the municipality and not a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road.

When a Village School District is Created in a Rural District, the territory Outside of the Village is Annexed to Such Village School District for School Purposes, Provided Such Annexed Territory Has an Area of Less Than Sixteen Square Miles. Where the Territory Remaining in the Rural District After the Creation of the Village, is Sixteen Square Miles or More, Such Territory Retains Its Identity as a Rural School District.

No. 919—(Opinion Dated January 6, 1920)

Hon. Frank B. Pearson, Superintendent of Public Instruction,
Columbus, Ohio.

Dear Sir: Acknowledgment is made of your request for an opinion upon the following question:

"What is the meaning of the words in the statute 'provided such territory has an area less than 16 square miles'? Does it mean the territory of what was originally the rural district before the village was formed, or does it mean the territory left outside the corporate limits of the newly created village which is also the part of the rural school district not included in the village district formed according to the provisions of Section 4687 G. C.?"

Section 4687 G. C. (104 O. L., 133) reads as follows:

"Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles."

Section 4681 G. C. reads:

"Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, should constitute a village school district."

Section 4679 G. C. reads as follows:

"The school districts of the state shall be styled, respectively, city school districts, village school districts, rural school districts and county school districts. (104 v. 133.)"

It will be noted that under Section 4679 G. C. there are four

kinds of school districts in Ohio and that the special school district which was formerly in existence and whose confines were usually within the territory of a township, is no longer in existence. The special school districts are in many cases later passed to village school districts, become village school districts upon such transition, or, on the other hand, become a rural school district with a board of education of its own, although it might technically be located in the township rural school district.

At the time of the passage of Section 4687 G. C., there were a number of special school districts in the state and the general assembly had these special school districts in mind when Section 4687 G. C. was enacted, as well as the township rural school district which was also created at that time in the enactment of the present school code of Ohio (104 O. L., 133). It will thus be seen that Section 4687 G. C. could operate in two instances where the question of surrounding territory was involved: First, a rural school district which was formerly a special school district could become, under the statutes, a village school district, and second, a village could be incorporated from certain territory in a township rural school district, though such village, prior to its incorporation, might have been a part of the township school district and not at any time a special school district. Thus we come to a condition in which a township, which might have 36 square miles in territory, would contain a village which was not incorporated but was one of the former subdistricts in the township rural school district.

In the section under consideration the word "territory" occurs several times and your question is, whether the words "such territory," as last used in such section, has reference to the original rural school district before the village was formed or the territory left outside the corporate limits of the newly created village, which territory is also part of the rural school district not included in the village district. The latter part of the section is speaking of the territory that is to be attached to such village school district when newly formed, and says:

"Such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles."

The antecedent of the words "such territory" last occurring above, is "such territory" first mentioned, that is, the territory that is to be attached, and the section therefore means the territory that is left in the former rural school district after the village

was incorporated, because, if it meant the whole of the territory of the school district, the section would have ended

“provided such district has an area of less than 16 square miles.”

The idea here is that if this territory in the former rural school district be more than 16 square miles after such village had been incorporated, then such territory remaining should have the privilege of retaining its identity as a rural school district until such time as it might care to become a part of the village school district created. The section means that if the territory remaining in the rural school district after the formation of the village school district is 16 square miles or more, and it might be nearly 36 square miles if the rural school district was a township school district, then such remaining territory thereby becomes or remains a rural school district, but if the remaining territory situated in the old rural school district is less than 16 square miles, then this remaining territory is mandatorily attached to the newly created village school district for school purposes. But, if the remaining territory has an area of 16 square miles, it is a school district of its own right and not attached to the newly created district, unless by later proceedings through the county board of education, or by voluntary action taken by the electors of such territory in becoming annexed to the village corporation.

It is therefore the opinion of the attorney general that, when a village school district is created in a rural district, the territory outside of the village is annexed to such village district for school purposes, provided such annexed territory has an area of less than 16 square miles. Where the territory remaining in the rural district, after the creation of the village, is 16 square miles or more, such territory retains its identity as a rural school district.

3

The Costs Incurred by the Trustees of County Memorial Associations in Giving Bonds to the State as Required by Section 3064, General Code, are Not Necessary Expenses Within the Meaning of Section 3060 General Code Which Provides That the Trustees Shall be Entitled to be Repaid Their Necessary Expenses From the Fund Raised by the Issues of Bonds Authorized by Section 3061 General Code.

No. 915—(Opinion Dated January 6, 1920)

Hon. Paul M. Ashbaugh, Prosecuting Attorney, Mt. Vernon, Ohio.

Dear Sir: Your letter of recent date, inquiring whether the

premium on bonds given by the members of the board of trustees of a county memorial association can be paid out of funds derived from the issue of bonds authorized and provided for by Section 3061 G. C., was duly received.

Section 3064 G. C. provides that the trustees shall give bond to the State in such sum as the commissioners fix, and to the approval of the commissioners, before making any expenditure of the fund above referred to.

The bond issue authorized and provided for by Section 3061 G. C. (108 O. L. 70) is for the erection or construction and maintenance of a county memorial building, and for the payment of compensation of an assistant secretary, superintendents, architects, clerks, laborers and other employes (see Sec. 3064), acquiring necessary lands (see Sec. 3065), and the preparation of plans and specifications for the construction of the memorial building (see Sec. 3066).

In 1914 Opinions of Attorney General, Volume II, page 1450, it was held that the proceeds of the bond issue authorized by the above statute were trust funds, and that being true no part thereof should be expended for any purpose not clearly warranted by statute.

The only claim of authority for the payment of the premiums on trustees' bonds is based upon Section 3060 G. C., which provides that the trustees shall be entitled to be repaid their "necessary expenses" from the fund referred to. The term "necessary expenses," in my opinion, does not refer to personal expenses incurred by the trustees in qualifying themselves for office, but rather to necessary expenses incurred in the performance of the duties imposed upon them in their official capacity as trustees with respect to the erection or construction and maintenance of the memorial building, the compensation of the assistant secretary, superintendents, architects, clerks, laborers and other employes, the acquisition of necessary lands, and the preparation of plans and specifications.

The General Assembly has, in some instances, expressly provided that the premium on official bonds shall be paid from public funds (see Sec. 1855 G. C. which provides that the cost of bonds of officers and employes of institutions under the control of the board of administration, etc. shall be paid from funds available for the respective institutions), and the inference to be drawn from that and kindred legislation is that such payment of such items, to be lawful, must be so authorized.

Section 9572 G. C. also provides that whenever any fiduciary has given bond with a surety thereon, a reasonable sum paid therefor shall be allowed in the settlement of his account as such fiduciary by the judge, court or officer whose duty it is to pass upon the account. The latter statute appears to be inapplicable to the trustees of county memorial buildings, for the reason that no duty appears to be enjoined upon such trustees to file an account.

You are therefore advised that the costs incurred by the trustees of county memorial associations in giving bonds to the State as required by Section 3064 G. C. are not "necessary expenses" within the meaning of Section 3060 G. C. which provides that the trustees shall be entitled to be repaid their necessary expenses from the fund raised by the issue of bonds authorized by Section 3061 G. C.

SECRETARY OF STATE

NEW CORPORATIONS

The W. N. Genedict Co., Cincinnati, \$50,000. Wm. Benedict, Wm. A. Etter, E. H. Yates, Carl E. Basler, Chas. C. Benedict.

The Fristoe Grain Co., Piqua, \$50,000. J. A. Manning, B. R. Fogt, C. K. Fogt, Nellie F. Fristoe, E. D. Fristoe.

The Baker-Waechter Co., Cleveland, \$60,000. Lewis Drucker, C. Goldsmith, H. G. Goldsmith, Maurice W. Bruml, H. L. Taylor.

The Pioneer Rubber Co., Willard, \$500. A. H. Commings, Amos H. Englebeck, C. Blaker McDowell, F. R. Schoner, Edwin W. Brouse.

The Standard Porcelain Co., East Liverpool, \$10,000. J. T. Jackson, E. W. Bookman, W. E. Skidmore, E. B. McHenry, Frank Diddle, William S. Skidmore.

The Universal Car Co., Cincinnati, \$250,000. E. H. Matthews, C. H. P. Pterman, J. W. Matthews, Maurice F. Weiskopf, Dennis Weiskopf.

The R. L. O'Dell Shoe Co., Cincinnati, \$15,000. R. L. O'Dell, E. P. Mundy, Edgar M. Johnson, C. H. Thoben, A. C. Berkemeyer.

The M. C. Robinson Co., Ashtabula, \$75,000. M. C. Robinson, W. G. Robinson, R. K. Robinson, H. P. Robinson, C. D. Mills, M. R. Mills.

William H. Forbes Construction Co., Cleveland, \$30,000. C. A. Alexander, John H. Schultz, May M. Findley, K. T. Siddall, M. I. Buelow.

Greenville, Ohio Realty Co., Greenville, \$50,000. Edwin C. Wright, Geo. Minnick, Geo. F. Crawford, Adelbert Mattz, Conrad Kipp, J. A. Rice, C. W. Fry, N. H. Wright.

Kirk Supply Co., Cleveland, \$10,000. Clark T. McConnell, Ralph M. Sanborn, Charles T. Rich, M. Kubik, F. M. Karbarg.

Lake Erie Accessories Co., Cleveland, \$1000. Walter C. Kelley, Otto J. Bartunek, M. L. Harrington, E. P. Schlosser, E. H. Rook.

Dougherty Development Co., Medina, \$50,000. G. F. High, C. J. Dougherty, N. O. Fuller, R. E. Nurse, W. P. Ainsworth.

Perry Sand & Coal Co., Columbus, \$10,000. E. A. Wheeler, D. L. Mason, C. G. Kern, O. C. Roush.

Truxton-Loveman Drug Co., Cleveland, \$10,000. James F. Truxton, Burton, Loveman, A. W. Halman, D. J. Zinner, E. M. Chaloupka.

Michigan-Illinois Co., Cleveland, \$50,000. Walter D. Meals, Charles S. Reed, W. K. Gardner, H. H. Gorman, M. L. Esch.

Eaken-Schroth Co., Akron, \$150,000. A. B. Eaken, C. A. Schroth, R. L. Kryder, B. A. Shriber, R. H. Wilson.

W. J. Husson Co., Toledo, \$10,000. George A. Schnapp, Henry E. Gens, Grove H. Sacor, Charles T. Lowton, Catherine C. Gens.

Toledo Tool-Engineering Co., Toledo, \$10,000; F. E. LaFrance, E. R. Carroll, D. M. Grimm, F. H. Wells, R. Ray Rowe.

French Luggage & Leather Goods Co., Cleveland, \$20,000. Jacqueline J. LaRue David E. Siegan, Martin M. Bailey, Emmett P. Dowling, Frances H. Devlyn.

Essenel Productions De Luxe Co., Cleveland, \$100,000. George Vivislan-Smith, Lorraine B. Liebttag, H. C. Weinstein, Samuel Lustig, B. E. Collins.

Mutual Savings & Loan Co., Akron, \$100,000. R. B. Koontz, H. C. Scatterday, A. J. Akers, C. W. McLaughlin, Francis Seiberling.

Prospect-Fourth Co., Cleveland, \$5,000. Thomas H. Jones, C. P. Deavis, Jr., Frank H. Ginn, Henry A. Matting, W. B. Cockley.

Shelby Metal Products Co., Shelby, \$40,000. C. O. Sellen, P. F. Stokes, C. C. Fish, Anna R. Fish, C. W. Giller, D. W. French.

Erie Oil & Grease Co., Cleveland, \$12,000. E. N. Mathews, E. H. Parker, R. H. McQuat, V. Wilson, J. H. Murphy.

Bessemer Oil Co., Buchtel, \$35,000. Harve S. Aayre, Charles J. Whitmore, John B. Whitmore, John Culp, Ira Blackstone.

Hoefmeyer-Rutledge Co., Cleveland, \$11,000. Theodore C. Hoffmeyer, Emmett W. Rutledge, M. B. Vilas, Charles D. Simmons, M. T. Gorton.

Atha Drilling Co., Columbus, \$50,000. W. Hunter Atha, John A. Ford, F. W. Buston, L. M. Krauth, C. B. Paul.

Forest City Auto Trucking Co., Cleveland, \$10,000. Edw. J. Sklenicks, Edw. C. Kostee, Henry F. Vichek, Jos. F. McFadden, John Cervený.

Willdon Realty Co., Cleveland, \$10,000. Don P. Mills, W. R. Godfrey, P. S. Knight, Louise M. Dreher, E. S. Miller.

Pearce & Co., Cleveland, \$125,000. E. A. Thayer, Jr., N. R. Thayer, E. Brown, E. A. Thayer, Sr., H. Redick,

Cincinnati Beveling Co., Cincinnati, \$5,000. Rene L. Brassine, Barbara Brassine, Frank C. Walter, Jr., Sam Krasnitzke, Hilda Held.

Dayton Appliance Co., Dayton, \$25,000. J. C. A. Johnson, Jr., H. E. Estabrook, B. D. Moore, J. B. Coolidge, Daniel L. Dwyer.

National Steel Products Co., Dayton, \$90,000. Jos. G. Lehman, Harry Hehman, Bernard Lehman, Isaac Eisenberger, Daniel Blau.

Elyria Savings & Trust Co., Elyria, \$500,000. H. W. Ingersoll, John Murbach, H. M. Andrews, H. C. Harris, E. M. Rice, Theo. T. Robinson, J. E. Murbach, J. T. Annas, F. W. Colson.

P. Sullivan Co., Cincinnati, \$900,000. John Sullivan, W. T. Dickerson, Wm. J. Sullivan, Geo. J. Hans, W. A. Geoghegan.

Harris Heater Co., Newark, \$20,000. John Howard Jones, Roderic Jones, Bertha Wilson, Mary Harris, Bernadette Winter.

American Bisque Co., Columbus, \$25,000. W. S. Eberle, A. W. Ridge, Daniel E. Stuber, King McCreery, Charles R. Snyder.

W. C. Gaspard Construction Co., Cleveland, \$10,000. E. C. Gaspard, E. F. Beardsley, M. R. Beardsley, C. A. Gaspard, O. C. Beardsley.

Brownell-Sumner Co., Cleveland, \$10,000. Charles E. Phipps, L. M. Young, F. J. Fraser, E. C. Landaman, Lawrence M. Rich.

Bennett Drug Co., Salem, \$20,000. Fred T. Bennett, M. E. Treat, J. C. Boone, N. R. Steele, R. W. Campbell.

Clark Restaurant Co., Cleveland, \$25,000. R. D. Clark, N. L. Swisher, G. S. Burrows, F. W. Brunner, D. L. Schwab.

Carter-Richards-Griffith Co., Cleveland, \$5,000. Wallace I. Knight, E. C. Gilbert, A. H. Heady, F. M. Snyder, M. E. Gaul.

Royal Motors Service Co., Cleveland, \$10,000. A. J. Halle, J. O. Stein, D. B. Stone, S. H. Miller, B. R. Kohn.

Painters' Products & Mfg. Co., Cleveland, \$75,000. J. W. Jones, B. J. Cline, D. P. Martin, C. A. Rosequist, M. A. Jones.

Sequel Rubber Heel Co., Elyria, \$50,000. Clark T. Maddock, J. G. Schullian, Louise Schullian, Lola B. Maddock, F. P. Crosse.

Workers' Realty Co., Cleveland, \$10,000. J. Shapiro, J. Suffens, Edw. Weinberger, Janet Kippen, A. H. Martin.

Downer Optical Co., Cleveland, \$5,000. C. M. Horn, Walker H. Nye, Alfred Kelley, Neil P. Beall, Charles Follett.

Bayles Co., Cleveland, \$50,000. Julius Bayles, Lena Bayles, Samuel S. Bayles, Goldie Bayles, Morris A. Halperin, Anna Halperin.

B. F. Donley Engineering Co., Ashland, \$10,000. B. F. Donley, Jay R. Patterson, Leo Hoeffler, Mary P. Donley, J. F. Henderson.

Motor Casting Co., Canton, \$500,000. H. H. Timken, J. C. Obermier, Charles Balough, G. W. Russell, Austin Lynch.

Midland Motor Co., Washington C. H., \$25,000. W. M. Campbell, B. A. Schadel, M. L. Clark, Hazel Pommert, W. H. Brown.

Lowenstein Shoe Co., Toledo, \$40,000. Louis Lowenstein, Edw. Thal, Wm. Isaacs, Sherman L. Lowenstein, Hathal'e Isaacs.

Bell Varnish Color Co., Cleveland, \$10,000. G. E. Bell, M. F. Bell, L. A. Bell, L. W. Alverson, R. W. Wheelock.

L. Witt State Bank, Bellaire, \$65,000. L. Witt, Frank Costanzo, Angelo Cifaldi, Louis Costanzo, Steve Kacinski, Felix Di Genova, Vincenzo Gentile.

Nolte Screw Machine Products Co., Cincinnati, \$75,000. Edw. G. Nolte, Louis G. Nolte, Geo. Nolte, August B. Luckey, John L. Moorehead.

Wheatcrisp Products Co., Cleveland, \$1,500,000. J. H. Vaughan, F. G. Behringer, E. B. Underhill, H. Twinning.

Automobile Appraisal Sales Co., Toledo, \$16,000. George W. Ritter, L. G. Gardner, E. E. Lay, M. M. McGowan.

Guaranty Mortgage Co., Akron, \$512,500. C. F. Schnee, J. C. Grimm, Joseph Thomas, B. R. Epstein, Fred J. Miller.

Wilt Oil & Gas Co., Medina, \$10,000. F. W. Woods, Floyd E. Stine, E. O. Bowman, H. G. Rowe, J. H. Wilt.

The Summit Farmers' Cooperative Co., Summit Station, \$25,000. J. W. Blouser, C. A. Wagy, E. N. Beem, E. A. Tyler, R. W. Palmer.

Main Auto Supply Co., Cincinnati; \$25,000. K. J. Dillon, C. O'Brien, Geo. Sauer, Jr., C. C. Stephens, E. C. Ellerington, Edward F. Schuabel, Harry Carsteno.

Reinbold Co., Cleveland; \$50,000. Karl A. Reinbold, Homer B. Dicken, M. Severn, J. N. Pugh, H. Rutherford.

L. Rozin-Engledel Co., Cincinnati; \$15,000. Louis Rozin, Morris Katz, Aaron J. Strikman, William J. Klein, Dave Katz.

Cyclomobile Mfg. Co., \$600,000. John E. Parsons, Thomas Davies, Charles F. Hamel, William E. Himelboch, Isaac Mittenthal.

U. S. Bulletin Co., Celina; \$20,000. E. M. Dull, James M. Dull, Harry M. Trout, Tillie Sacher, W. R. Thomas.

Sachs-Engelder Co., Cleveland; \$10,000. A. C. Engelder, J. J. Sachs, Cyril Kremser, G. B. West, J. G. Tischler, P. Buchwald.

Forest City Monumental Co., Cleveland; \$20,000. Louis Hartman, Stanley Sindelar, Frank John Strait, Sam Gagliione, Helen G. Hartman.

Lorain Mfg. Co., Cleveland; \$5000. C. F. Gross, R. Gergely, Miriam Strassburger, Anna M. Dietz, N. H. Elder.

Jugoslovenski Delavski Naredni Do, West Park; \$15,000. Peter Perusek, Paul Slabe, Victor Bezjak, Mike Augustine, Johan Gorisek, Anton Vehar, Louis Sinkavec, John Zarajsek, Steve Brodnik, Marke Kubar.

Horton Pottery Co., Chillicothe; \$60,000. Christopher Horton, Florence A. Horton, Charles M. Horton, James F. Machin, Alberta C. Machin.

Toledo Erie Cord Tire Co., Toledo; \$25,000. Jule Surtman, Allen J. Seney, Ralph W. Doty, Leon H. Roberts, Fred C. Stebbins.

Harrison-Williams Co., Cleveland; \$25,000. William A. McAfee, A. B. Oakes, L. A. Pejeau, Hazel B. Lindeman.

Kellogg Trucking Co., Cleveland; \$25,000. C. F. Reavis, Jr., James P. Wood, Grover Huggins, Thomas H. Jones, William B. Erckley.

The Marquette Metal Products Co., Cleveland, \$50,000. Sidney N. Weitz, Mark Grossman, Ian M. Ross, Harry Pott, Fred B. Fishman. Friedman, O. A. Moeller, Antonio Amarnino.

The Putnam-Martin Co., Cleveland, \$10,000. W. A. Calhoon, H. C. Putnam, A. C. Carter, Charles Follett, Orville Smith.

The Parks Co., Cleveland, \$10,000. Michael J. Harwood, Minnie Harwood, Phil Zimmerman, Mollie Zimmerman, William G. Gibbons.

The Flowers Mausoleum Co., Toledo, \$30,000. Joseph W. Flowers, Edgar M. Flowers, Doris F. Hubbard, Micholes J. Walniski, H. A. Draper.

The Davenjack Realty Co., Cleveland, \$10,000. Sidney N. Weitz, Mark Grossman, Ian M. Ross, Harry Pott, Fred B. Fishman.

The Koch Building Co., Cleveland, \$2500. George D. Koch, Charles C. Koch, Louise M. Koch, William F. Kees, Amy P. Howell.

The Vulcan Products Co., New Lebanon, \$25,000. G. C. Coyner, G. W. Hefner, Sr., D. C. Mills, A. C. Conover, O. F. Brumbaugh, E. O. Kreitzer, J. E. Brumbaugh, F. J. Weaver.

Original Clothing Co., Canton, \$20,000. Herman Margolis, Lewis Manheim, Myer Manheim, M. K. Margolis, John C. Welty.

Tyler-Patterson Co., Cleveland, \$10,000. Edgar J. Tyler, F. C. Wright, C. Patterson, F. M. Marsh, J. J. Grau.

Martin-Pierce Co., Toledo, \$25,000. John I. Martin, Ralph M. Pierce, Ernest Dumond, Harry Slater, George Runkel.

Arlington Land Co., Elyria, \$20,000. R. F. Bandemark, Kathryn Sage, R. H. Rice, William Whitney, S. J. George.

National Farmers' Auxiliary Society, Columbus, \$10,000. J. V. Morgan, Chas. S. Hauck, LeRoy P. Wood, A. C. Jacobs, J. C. Rogers.

Dixie Builders' Supply Co., Toledo, \$10,000. R. W. North, H. D. Bowlus, J. Shumway, A. M. North, V. N. Bowlus.

Kramer Hardware Co., Dayton, \$50,000. Edw. D. Kramer, Geo. Kramer, Edw. T. Hall, Roland W. Baggott, R. N. Brumbaugh.

Brink Oil Co., Wooster, \$50,000. H. S. Brink, D. J. Foss, E. Paumier, Geo. Quinby, C. L. Moody.

Gatch Co., Cleveland, \$50,000. E. S. Wertz, F. K. Gatch, C. Trinter, E. Ary, C. G. Stone.

Asbestar Co., Cleveland; \$25,000. Howard Markt, Andrew B. Lea, E. H. Price, Georgia M. Bowen, Jay Seigler. Xenia Oil Co., Xenia, \$50,000. Walter S. Davis, R. W. Moore, C. E. Owens, Albert Gregory, Homer C. Corry.

Valley Ice Co., Hamilton, \$250,000.
H. B. Hanger, L. B. Weisenburgh, J.
L. Glass, W. B. Sneed, A. O. Wilson.

Increases

Eilert Beverage Co., Cleveland; \$50,000 to \$400,000.
Marion Masonic Temple Co., Marion; \$50,000 to \$75,000.
Marietta Refining Co., Marietta; \$100,000 to \$200,000.
Gem City Building & Loan Association, Dayton; \$10,000 to \$25,000.
S. W. Halfur Motor Truck Co., Cleveland; \$25,000 to \$250,000.
Woodsfield Tool Co., Woodsfield; \$15,000 to \$25,000.
Oster Mfg. Co., Cleveland; \$100,000 to \$300,000.
Brookins Mfg. Co., Dayton; \$10,000 to \$25,000.
Campbell Bros. Co., Youngstown; \$10,000 to \$200,000.
People's Mortgage Co., Cleveland; \$65,000 to \$150,000.
Harvey Steel Products Co., Cleveland; \$120,000 to \$1,200,000.
Oul Building & Loan Association, Cleveland; \$1,000,000 to \$2,000,000.
Fostoria Serum Co., Fostoria, \$50,000 to \$75,000.
Bethesda Coal Co., Belmont Co., \$20,000 to \$50,000.
Maple City Rubber Co., Norwalk, \$20,000 to \$75,000.
C. W. Underwood Oil & Gas Co., Columbus, \$10,000 to \$20,000.
Puritan Chocolate Co., Cincinnati, \$25,000 to \$100,000.
Stearns & Foster Co., Lockland, \$1,600,000 to \$2,700,000.
Morgan-Anderson Co., Toledo, \$20,000 to \$50,000.
Ohio Savings & Loan Co., Cleveland, \$220,000 to \$300,000.
Berg-Clark Electric Co., Cleveland, \$25,000 to \$50,000.
Finzer Bros. Clay Co., Shanesville, \$100,000 to 200,000.
A. Goldstein Sons, Lorain, \$25,000 to \$75,000.
Acme Power Co., Toledo, \$3,200,000 to \$4,500,000.
Vulcan Welding Co., Akron, \$50,000 to \$100,000.
C. F. Nerwold Co., Canton, \$150,000 to \$250,000.
Wagoner-Marsh Co., Akron, \$20,000 to \$50,000.
Triangle Paper Bag Co., Cincinnati, \$10,000 to \$30,000.

De Luxe Theatre Co., Lima, \$10,000 to \$30,000.

Zanesville Fruit Co., Zanesville, \$40,000 to \$90,000.
Akron Insurance Agency Co., Akron, \$10,000 to \$50,000.
Clarke Co., Cleveland, \$10,000 to \$25,000.
Sparks-Withington Co., Cleveland, \$1,250,000 to \$298,750.
Harvard Lumber Co., Cleveland, \$75,000 to \$300,000.
Zanesville Fruit Co., Zanesville, \$40,000 to \$90,000.
O. S. Roberts Co., Columbus, \$50,000 to \$100,000.
American Forge & Machine Co., Canton, \$150,000 to \$1,000,000.
The Certigraph Co., Cincinnati; \$250,000 to \$1,000,000.
The Egelhoff Studios Co., Columbus; \$25,000 to \$50,000.
The Ohio Savings & Trust Co., Akron; \$125,000 to \$300,000.
The Studios Realty Co., Cleveland; \$40,000 to \$100,000.
The Cleveland Wood Products Co., Cleveland; \$10,000 to \$50,000.
The Polish White Eagle Building Co., Dayton; \$10,000 to \$25,000.
The Johnston-Shelton Co., Dayton; \$200,000 to \$400,000.
The Gaddis Garrison Brick Co., Columbus; \$25,000 to \$100,000.
The State Palace Restaurant Co., Columbus; \$50,000 to \$80,000.
The International Rubber Sales Co., Cincinnati; \$5000 to \$10,000.
The Hanson Clutch & Machinery Co., Tiffin; \$60,000 to \$300,000.
The Hanke Bros. Co., Cincinnati; \$150,000 to \$450,000.
The Supreme Motors Corporation Co., Warren; \$1,000,000 to \$2,000,000.
The Reed Klopp Co., Middletown; \$25,000 to \$100,000.
The Vinwell Oil & Gas Co., Wellston; \$20,000 to \$40,000.
The Canton Clay Products Co., Canton; \$75,000 to \$125,000.
The Wagner Loan Co., Lima; \$25,000 to \$50,000.
The James Bros. Coal Co., Alliance; \$20,000 to \$50,000.
The Orville Bedding Co., Orrville; \$45,000 to \$90,000.
The West Sales Equity Exchange Co., West Sales; \$35,000 to \$50,000.

Decreases

The Citizens Investment Co. of Akron, Ohio; \$50,000 to \$5000.

PUBLIC UTILITIES COMMISSION

No. 1584—The Ohio Electric Railway Company, Complainant, vs.
The City of Lima, State of Ohio, Defendant.

(Dated January 14, 1920.)

This day, after full hearing and argument by counsel, this cause came on for further consideration.

And the commission, first taking under consideration the tentative valuation, heretofore certified, of the several classes and kinds of property, and the property as a whole, of said The Ohio Electric Railway Company, as of March 1st, 1919, used and useful for the convenience of the public in the furnishing of steam heating service in the city of Lima, Ohio, and the protests thereto of the city of Lima, Ohio, and said The Ohio Electric Railway Company, finds:

(1) That in the original calculation of the items of property listed in Boiler Room Equipment—page 10 of the Commission's inventory and appraisal—through error the total at the bottom of this page included twice certain sub-totals as \$16,341.18 and \$1,138.33, together with overheads of 22 per cent., amounting to \$19,814.24. Of this amount but fifty per cent. is properly applicable to Steam Heating, or \$9,907.12. This reduces the Boiler Room Equipment (less piping) from \$81,720.77 to \$71,813.65, and

(2) That the inclusions mentioned as the cause of the error set forth in Finding (1) are magnified by the addition of Intangibles and Overheads, so that the total error to be deducted from the Reproduction Value in the tentative valuation is \$11,090.59, and from the Present Value in the tentative valuation is \$5,641.74.

It is, therefore,

Ordered, That the following be, and hereby is determined to be, and made the final valuation of the several classes and kinds of property of said The Ohio Electric Railway Company, used and useful for the convenience of the public in the furnishing of steam heating service in the city of Lima, Ohio, and of said property as a whole, as of March 1st, 1919, towit:

Description.	Reproduction Value.	Deprecia- tion.	Present Value.
Land	\$ 5,203.00	\$ 0.00	\$ 5,202.00
Buildings	14,246.34	3,178.96	11,067.38

DEPARTMENT REPORTS

Boiler Room Equipment, less piping	71,813.65	19,451.15	52,362.50
Pipe and Fittings	18,070.73	4,563.21	13,507.52
Engine Room Equipment	301.47	60.29	241.18
Distribution System	111,044.15	45,039.50	66,004.65
Office Furniture and Fixtures	191.62	29.23	162.39
Tools	1,343.65	199.03	1,143.62
Sub-Total	222,212.61	72,521.37	149,891.24
Intangibles & Overheads. Omissions (1%)	2,222.13		2,222.13
Preliminary and Organi- zation Expenses, (5%)	11,110.63		11,110.63
Taxes @ 1½% for 9 months	2,499.89		2,499.89
Sub-Total	238,045.26		165,523.89
Interest at 6% for 9 months	10,712.04		10,712.04
Stock on hand	6,415.35		6,415.35
Working Capital	10,412.35		10,412.35
Total	\$265,585.00	\$72,521.37	\$193,063.83

And the commission coming now to consider the complaint of and appeal, of The Ohio Electric Railway Company, from an ordinance, passed by the council of the city of Lima, Ohio, on the 31st day of October, 1918, regulating the price that may be charged for steam for heating purposes in the city of Lima, Ohio, for a period not exceeding five years from the taking effect of said ordinance; and being fully advised in the premises, and having caused an appraisalment to be made and having ascertained and hereinbefore determined the value of all of the property of said company actually used and useful for the convenience of the public in the furnishing of steam for heating purposes in said city of Lima, Ohio, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right, and exclusive of any value added thereto by reason of a monopoly or merger, and having given consideration, also, to the necessity of making reservation from income for surplus, depreciation and contingencies, and all other matters which were deemed proper, the commission finds:

(1) That the rates and charges following, to-wit: "For the first 50,000 pounds of condensation per month, sixty-two and one-half cents per 1,000 pounds; for the next 50,000 pounds of condensation per month, fifty cents per 1,000 pounds; for the next 300,000 pounds of condensation per month, forty-four cents per 1,000 pounds, and for the next 400,000 pounds, or over, of condensation per month, twenty-five cents per 1,000 pounds," so fixed by said ordinance, are unjust and unreasonable, and ought not to be ratified and confirmed, but that just and reasonable rates and charges should be substituted therefor.

(2) That the rates, charges and regulations following, to-wit: "For the first 1,000 square feet of radiation required, $1\frac{1}{2}$ cents per square foot, balance $\frac{1}{4}$ cent per square foot, per month, plus a condensation charge. "For first 50,000 pounds of condensation per month, 61 cents per 1,000 pounds; next 50,000 pounds of condensation per month, 52 cents per 1,000 pounds; next 300,000 pounds of condensation per month, 44 cents per 1,000 pounds; over 400,000 pounds of condensation per month, 34 cents per 1,000 pounds.

"The required radiation for medium and low pressure steam heating service, which is the basis for the fixed charge in the steam rates, is to be determined from the following formula and data:

$$\text{Radiation required} = \frac{\text{B. T. U. lost per hour}}{\text{B. T. U. emitted per sq. ft. of radiation per hour.}}$$

"To compute the radiation required in any room: First compute the B. T. U. required to heat the air in the room. Second—compute the B. T. U. lost through the walls, doors, windows, floors and ceilings, using the constants given in the following tables: (See Table No. 1). Then, if the sum of all the losses mentioned above be divided by 250, the result will be the "Straight Steam" required radiation.

"Air Changes: Good practice allows for two changes of air per hour. One B. T. U. will heat 50 cubic feet of air one degree Fahrenheit, and assuming a temperature difference between the air in the room and that outside of 80 degrees, it will require 1.6 B. T. U. per hour per cubic foot of space in the room for one change, or 3.2 B. T. U. per hour per cubic foot of space for two changes. In the application of the formula, get the cubical contents of the room and multiply this by 1.6, if but one change of air is to be allowed, or by 3.2 if two changes are allowed.

"Losses Through Walls, etc.: The B. T. U. loss per square foot per hour through various building materials when the temperature difference is 80 degrees Fahrenheit varies with the class of material and the thickness, and the method of con-

struction. In the computation of the losses through the walls of different classes first find the square foot area of each kind of wall surface, measured on the inside of the room, and then multiply this area by the proper constant to be found in Table 1. In Table 1 the constants of losses of B. T. U. through various building materials are the average of four or five of the best authorities.

The values given in Table 1 are correct only when the walls are subject to a southern exposure, and if they are other than southern, the losses given in the table should be increased by the percentages shown in Table 2.

Table 1.

B. T. U. less per square feet per hour through various building materials when the temperature difference is 80 degrees, Fahrenheit.

Material.	B. T. U. Loss.
Single window, (average)	92
Single skylight	90
Double skylight	50
Plate glass (set tight)	60
Door (1/3 glass)	80
Plain door	33
8" brick wall	37
12" brick wall	25
16" brick wall	21
20" brick wall	18
24" brick wall	15
30" brick wall	12
36" brick wall	10
Lath and plaster ceiling (no floor above)	36
Lath and plaster ceiling (floor above)	20
1½" pine plank	24
2" pine plank	20
Fireproof partition	24
Fireproof construction (flooring)	8
Fireproof construction (ceiling)	12
Lath and plaster partition (plastered one side)	22
Lath and plaster partition (plastered both sides)	25
Sheathing and clapboards	22
¾" floor (no plaster below)	28
¾" floor (lath and plaster ceiling below)	22
1½" double floor (no plaster below)	23
1½" double floor (lath and plaster below)	15
Average frame	28
Average frame, (plastered)	26
Concrete floor on earth	20

Table 2.

Location.	Heat Loss Increase in %
North, Northeast or Northwest rooms	10-15
East or West rooms	5-10

"Results: Having the sum of the several losses in B. T. U. in air changes, and wall, etc. losses, then divide the sum by 250 and the result will be the radiation required."

are just and reasonable rates, charges and regulations for steam heating service as furnished and supplied by the appellant in the City of Lima, Ohio.

(3) That the gross and net revenues derived by said The Ohio Electric Railway Company from furnishing steam for heating purposes in the City of Lima, Ohio, at the rates, prices, charges and regulations herein found by the Commission to be just and reasonable, will be sufficient to yield said The Ohio Electric Railway Company a reasonable compensation for such service.

(4) That the provisions of Section 2 of the ordinance herein appealed from are reasonable and just, should be, and hereby are ratified and confirmed.

It is, therefore

Ordered, That the rates and charges, and regulations, hereinbefore found and determined by this commission to be just and reasonable for the furnishing of steam, for heating purposes, by said The Ohio Electric Railway Company in the city of Lima, Ohio, be, and hereby they are substituted for the rates and charges fixed by said ordinance, which the commission has found to be unjust and unreasonable.

And the commission having made inquiry and investigation with respect to the ability of said The Ohio Electric Railway Company to furnish steam for heating purposes in the city of Lima, Ohio, during the period fixed by said ordinance, and having found that said The Ohio Electric Railway Company will be able to furnish its said product in said city during said period, it is therefore, further

Ordered, That rates, prices and charges, and regulations, not greater or in excess, or different from the rates, prices, charges and regulations for steam furnished for heating purposes by said The Ohio Electric Railway Company to the citizens and private consumers, and to the public buildings, grounds, streets, lanes, alleys, avenues, and marked places of the city of Lima, Ohio, for public and private use, which the commission herein had found to be just and reasonable, be and remain in force and effect for the period from

and after the effective date of said ordinance, herein complained of and appealed from, prescribed therein; and said The Ohio Electric Railway Company hereby is notified, directed and required to furnish its said product to consumers thereof and for public and private consumption in said city of Lima, Ohio, for and during said period. It is further

Ordered, That said The Ohio Electric Railway Company be, and hereby it is notified and directed to refund to all consumers of steam for heating purposes in the city of Lima, Ohio, either by credit or current bills or in cash, any excess there may be in the rates and charges paid by said consumers during the pendency of this action above the rates and charges herein found by the commission to be just and reasonable.

*
No. 1873—In the Matter of the Joint Application of The Whitman & Chilcote Brothers, and The West Millgrove Gas & Oil Company for the Approval of the Sale and Purchase of Public Utility Property.—Prayer Granted.

(Dated January 9, 1920.)

This day this matter came on for final consideration upon the joint application of The Whitman & Chilcote Brothers, (a partnership, for some time the owner and, up to the first day of October, 1919, the operator of the public utility furnishing natural gas service to consumers thereof in and about the village of West Millgrove, Ohio), and The West Millgrove Gas & Oil Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent to and approval, by this commission, of the sale by the said The Whitman & Chilcote Brothers, and the purchase, by said The West Millgrove Gas & Oil Company, on or about the first day of October, 1919, of all of the property composing the aforesaid public utility.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the convenience of the public was promoted by such purchase and sale of public utility property, and that the public thereby will be furnished adequate service for a reasonable and just rate of charge therefor, and is satisfied

that, in so far as it has the authority so to do, it should now formally consent to and approve the said purchase and sale of such property. It is, therefore,

Ordered, That, in so far as the commission has the authority so to do, it do now and hereby formally consent to and approve the sale, on or about the first day of October, 1919, of the public utility property theretofore owned and operated by The Whitman & Chilcote Brothers in and about the village of West Millgrove, Ohio, to The West Millgrove Gas & Oil Company. It is further

Ordered, That said parties forthwith file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

✽

No. 1876—In the Matter of the Application of The Marion Water Company for Authority to Issue Preferred Capital Stock. Prayer Granted.

(Dated January 21, 1920.)

This day this matter came on for consideration upon the application of The Marion Water Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and dispose of six per cent preferred capital stock of the par value of forty-two thousand, six hundred dollars, the proceeds arising from the sale thereof to be used to reimburse applicant's treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction of additions, extensions and improvements to its plant and facilities between the dates October 13th, 1918, and December 31st, 1919.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That, between the dates October thirteenth, 1918, and December thirty-first, 1919, (both inclusive), the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities the sum of \$42,604.37, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

(2) That the issue of applicant's said preferred capital stock is reasonably required and the money to be procured thereby necessary for the reimbursement of its treasury for the aforesaid uncapitalized expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Marion Water Company be, and hereby it is authorized to issue its six per cent preferred capital stock of the par value of forty-two thousand, six hundred dollars (\$42,600.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to wit: The reimbursement of applicant's treasury, to the extent of such proceeds, for the aforesaid sum of \$42,804.37 not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, between the dates October 13th, 1918, and December 31st, 1919, for the construction of additions, extensions and improvements to its facilities. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

**No. 1879—In the Matter of the Transfer of the Entire Assets of
The North Brewster Electric Light, Heat & Power Company to
The North Brewster Light Company. Prayer Granted.**

(Dated January 12, 1920.)

This day this matter came on for consideration upon the joint application of The North Brewster Electric Light, Heat & Power Company and The North Brewster Light Company, (corporations duly organized and existing under and by virtue of the laws of the

state of Ohio), asking the consent to and approval, by this commission, of the sale and conveyance, by said The North Brewster Electric Light, Heat & Power Company, and the purchase and acquisition, by said The North Brewster Light Company, of all the property, rights and other assets of said The North Brewster Electric Light, Heat & Power Company.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon that the public will be furnished adequate service for a just and reasonable rate or charge therefor upon such purchase and sale of public utility property, and is satisfied that its consent and authority for such purchase and sale of said property should be granted. It is, therefore,

Ordered, That said The North Brewster Electric Light, Heat & Power Company be, and hereby it is authorized to sell and convey to said The North Brewster Light Company, all of its property, rights and other assets, as the same are more particularly described and enumerated in a copy of a certain contract appended to the petition herein, as Exhibit "A," which exhibit, in so far as it describes and enumerates said property, hereby is made a part of this order by reference; and said The North Brewster Light Company hereby is authorized to purchase and acquire said property and assets, and to pay therefor the agreed consideration of two thousand, six hundred and forty-nine dollars and seventy-three cents (\$2,649.73. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, that applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings as to rates and service hereinbefore set forth be binding upon this commission in any future proceeding involving said matters.

ATTORNEY GENERAL

Where the County Board of Education Transfers Territory From One School District to Another School District in the Same County School District, Under the Provisions of Section 4692 General Code, Title to School Property Situated in Such Transferred Territory Vests in the Board of Education to Which Such Territory is Transferred, Upon the Completion of Such Transfer.—Where a Board of Education Receives Title to School Property Located in Territory Which Has Been Transferred by the County Board of Education Under the Provisions of Section 4692 General Code, Such Property May Thereafter be Sold by the Board of Education of the School District to Which Such Territory was Transferred, but Such Real or Personal Property to be Sold Must be Offered in the Manner Provided in Section 4756 General Code.—Where a County Board of Education Transfers Territory From One School District to Another School District in the County School District, Under the Provisions of Section 4692 General Code, Warranty Deeds to Real Estate Used for School Purposes and Belonging to the Board of Education From Which Such Territory or School Property, as Title to Real Estate Automatically Passes Upon the Completion of the Transfer.

(Opinion No. 939, dated January 15, 1920.)

Hon. Floyd E. Stine, Prosecuting Attorney, Medina, Ohio.

Dear Sir: Acknowledgement is made of your request for an opinion of this department on the following statement of facts:

“Some time ago, a rural school district known as C. C. school district went into the L. village school district by petition.

“The C. C. school district owned two (2) parcels of land which according to Section 4692 of the General Code of Ohio, became vested in the board of education of the L. village school district. The L. village school district afterwards offered this land for sale at public sale, and the same was purchased for about eight hundred dollars (\$800.00).

“Will you kindly advise me whether or not the L. village school board had a right to sell the same or if the price for which it sold would in any manner affect the sale thereof.

“Under the section of the statute authorizing the trans-

ferring of one school district to an adjoining district should deeds to the real estate be given by the school board which is being transferred, or does title automatically pass?"

In reply to our letter for further information you submit the following additional facts:

"The transfer was made by the county board of education ***. The L. village school district is not an exempted school district, but is under control of the county board of education and the county superintendent. The date of transfer was August, 1918."

It is noted that you make the direct statement that the C. C. school district, that is, the board of education of such district, owned two parcels of land, from which it is to be inferred that the C. C. board of education had a clear title to the property in question which was later transferred to the L. village school district. You indicate that the L. village school district is not an exempted school district but is under the control of the county board of education and therefore any transfer of territory made from the C. C. school district to the L. village school district would be made under the provisions of Section 4692 General Code, the statute which covers transfers of school territory where made in the same county school district. You indicate that the transfer was made in August, 1918, and that there is no question about the legality of the transfer of territory made by the county board of education at that time.

Bearing upon the question as to when such transfer would take effect and the question of legal title of the property in the territory transferred, Section 4692 General Code, reads in part as follows:

"The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, ***. The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred * * *."

From the above section it will be noted that upon the proper map having been filed with the auditor of the county, the transfer of the territory in question would be complete, provided, of course, that the proper notices had been published or posted and that no remonstrance had been filed with the county board of education within thirty days after the filing of such map with the county au

ditor. In the case at hand you indicate that all of these things have been properly complied with and desire to know whether or not the L. village school board had a right to sell the property transferred to it from the C. C. school district by the county board of education, and if the price for which it sold would in any manner affect the sale thereof. The general powers of a board of education appear in the following sections of the General Code:

Section 4749: "The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

Sec. 4756: "When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. The president and secretary of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

Sec. 4757: "Conveyances made by a board of education shall be executed by the president and clerk thereof ***. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board."

Sec. 7620: "The board of education of a district may *** make all other provisions necessary for the convenience and prosperity of the schools within the subdistrict."

Sec. 7690: "Each board of education shall have the management and control of all the public schools of whatever name or character in the district. *** "

The important part of Section 4692 General Code, under which transfers of school territory, located in the same county, are made,

as regards the question at hand, is this sentence;

“The legal title of the property of the board of education shall become vested in the board of education of the district to which such territory is transferred.”

This language of the statute says that the legal title shall become vested, and to vest is “to give an immediate fixed right of present or future enjoyment.”—Bouviere's Law Dictionary.

It would seem, therefore, that upon the completion of the necessary operations in the transfer, heretofore referred to, the legal title immediately vests in the district to which the territory was transferred, that is, in this case the L. village school district, and the board of education of the L. village school district would at that time become vested with all the title which the C. C. board of education had to the school territory in question. Under Section 4756 General Code, heretofore quoted, a board of education has the clear right to dispose of the real and personal property in which it has title, but the method prescribed in such section must be carried out in order that such sales may be legal. The section says that where the property is valued at more than \$300.00, there shall be a public auction, after thirty days' notice thereof by publication in a newspaper, or by posting notice in five of the most public places in the district.

You indicate that the property sold by the L. village school district, and which property had been transferred from the C. C. school district, which had formerly owned it, sold for about \$800.00, which, it will be noted, is in excess of the \$300.00 mentioned in Section 4756 General Code. So the price for which it sold has no bearing upon the right to sell and the legality of the sale could not be questioned if the manner of sale provided for in Section 4756, had been carried out. In the case at hand the right to sell is conferred in Section 4756, and the legal title to the transferred property is acquired under Section 4692 General Code, and inasmuch as in the latter section it says that the legal title shall become vested when the territory is transferred, the title passes automatically and there is no necessity of a warranty deed being given by the C. C. board of education to the L. village board of education. The transfer was made by the county board of education, which is a higher authority than either of the two local boards, and the record of the transfer, as carried upon the minutes of the county board of education, and the proper filing made in the office of the county auditor, would constitute evidence of the transfer.

As to the discretion of a board of education to do the things which it is permitted to do under the law, attention is invited to the very recent decision in the case of Brannon et al. v. County Board of Education of Crawford County, in the Tiro consolidated school district case, to be reported in 99 O. S. A pertinent part of such decision reads as follows:

"A court has not authority to control the discretion vested in a board of education by the statutes of this state or to substitute its judgment for the judgment of such board upon any question it is authorized by law to determine. Nor will a court restrain such board of education from carrying into effect its determination, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority."

It is true that a warranty deed from one board of education to another is provided for in Section 4690 General Code, which reads as follows:

"When territory is annexed to a city or village such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall remain vested in the board of education of the school district from which such territory was detached until such time as may be agreed upon by the several boards of education, when such property may be transferred by warranty deed."

The above section means that there must be in the first instance an annexation of territory outside of a city or village to such city or village for municipal purposes. Then there follows that such territory automatically becomes a part of the city or village school district. Where this condition obtains, that is that the territory is annexed to a city or village for municipal purposes, legal title to any school property situated in such territory shall remain vested in the board of education of the school district from which such territory was detached, until the time to be agreed upon, when the several boards of education transfers such school property by warranty deed. In the C. C. school district matter no territory was annexed to the village of L. for municipal purposes, hence the provisions of Section 4690 do not apply; on the other hand, it was a simple transfer of territory without any municipal annexation feature annexed to it and made under the provisions of Section 4692, wherein title to such territory vests at the moment the transfer is completed.

Based upon the statement of facts submitted, and the statutes herein quoted, it is therefore the opinion of the attorney general:

1. Where the county board of education transfers territory from one school district to another school district in the same county school district, under the provisions of Section 4692 General Code, title to school property situated in such transferred territory vests in the board of education to which such territory is transferred, upon the completion of such transfer.

2. Where a board of education receives title to school property located in territory which has been transferred by the county board of education under the provisions of Section 4692 General Code, such property may thereafter be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in Section 4756 General Code.

3. Where a county board of education transfers territory from one school district to another school district in the county school district, under the provisions of Section 4692 General Code, warranty deeds to real estate used for school purposes and belonging to the board of education from which such territory was transferred, need not be given to the board of education accepting such territory or school property, as title to real estate automatically passes upon the completion of the transfer.

3

County Auditors Are Not Entitled to Any Fees Whatsoever in Connection with the Collection of County Road Assessments. County Treasurers Are Entitled to Fees of One-Half of One Per Cent on the Amount of Such Collections to be Paid Upon the General Fund of the County and Not Deducted From the Special Assessments.

(Opinion No. 924, dated January 12, 1920.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Some time ago this department was in receipt of a letter from you requesting advice as follows:

"1. Can the auditor's and treasurer's fees for the collection of county special assessments be charged to the county general fund? It has been the custom to deduct the auditor's and treasurer's fees from the special assessments. This has resulted in a shortage in the property owners' share of the sinking funds as the county surveyor in making his assessments does not take into consideration the auditor's and treasurer's fees.

2. Can the county commissioners and surveyor make supplemental assessments? The surveyor makes up his estimated assessments and the commissioners have a hearing on them. Invariably the assessments are less than the property owners' share of the real cost of the improvement and less than the property owners' share of the bonds sold for the improvement. This results in deficits in the sinking fund.

3. If supplemental assessments cannot be made must the county or the township bear the deficits in which case it would be necessary to meet it by tax levy?

4. Another thing that we are confronted with is that the surveyor's estimate of the cost of an improvement does not always include sufficient drainage, approaches, etc. This means that these extras have been paid for in the past by the county alone. Supplementary assessments would enable the property owners to be charged with their share of these extras, if legal to make them. Could townships also be assessed for their proportion of the same?"

All of these questions seem to present considerable difficulty. While they were under consideration other similar questions arose, so that it was deemed unwise to attempt to answer the questions which have been quoted until such other questions had received consideration and a conclusion had been reached with respect thereto.

You will please find enclosed copies of Opinions Nos. 886 and 887, under date of December 24, 1919, which seem to answer Questions Nos. 2, 3, and 4. These questions as stated seem to relate to road improvements (see Question No. 4.) The enclosed copies of opinions deal with road improvements under the county and the state law respectively and hold that assessments should not be made and confirmed finally until the total cost of the improvement is known. If this rule is adhered to questions like these submitted can never arise. It is true that the practice has been otherwise in many localities, else the questions which have been referred to this department for consideration would not have been asked. For the future, however, all such questions can be avoided by adhering to the rule stated, which is that the assessments should not be made until the thing to be assessed, viz., a proportion of the actual cost and expense of the improvement, becomes a known quantity. This is the only way to avoid supplemental assessments, and, as pointed out in the opinions enclosed, there is no authority in law for making supplemental assessments. What has just been said is not in any wise inconsistent with provisions found in Sections 1210, General Code, and 6949 General Code, as to extra work, and in Section 7212 General Code, as to approaches and driveways.

These statements leave for consideration in this opinion only Question No. 1. This question has something in common with the other questions which have just been dealt with. The latter assume that the assessments are made before the actual cost of the improvement is known—an erroneous assumption; the former likewise assumes that county auditors and county treasurers are entitled to collection fees for collecting special assessments on account of road improvements. The correctness of this assumption must first be examined both as to the auditor and the treasurer.

Section 2624 of the General Code deals with the fees of the auditor. It provides as follows:

“On all moneys collected by the county treasurer on any tax duplicates of the county, other than the liquor, inheritance and cigarette duplicates, the county auditor on settlement semi-annually with the county treasurer and auditor of state, shall be allowed as compensation for his services the following percentages:

On the first one hundred thousand dollars, one and one-half per cent.; on the next two million dollars, five-tenths of one per cent.; on the next two million dollars, four-tenths of one per cent.; and on all further sums, one-tenth of one per cent. Such compensation shall be apportioned ratably by the county auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, corporations and school districts.”

The quotation is from amendment to the section made in 1919, (108 O. L., Part I, p. 561); but so far as the question now under consideration is involved the amendment is in nowise material.

This section, as it will be observed, authorizes the county treasurer to retain fees on moneys collected “on any tax duplicate of the county” other than certain enumerated duplicates. The question which now arises is as to whether or not a special assessment duplicate is a “tax duplicate” within the meaning of this section. It will be remembered that road assessments are not placed on a tax duplicate (see Section 6923 General Code.) It is true that that section provides that when so placed such assessments are “to be collected as other taxes,” but this clause may not be sufficient to make the duplicate on which they are collected a “tax duplicate” for the purposes of Section 2624.

On the other hand, the consequences of holding that the auditor is entitled to collection fees for the service under consideration are such, in the present state of the statutory law, as to dictate an opposite conclusion. For if the fees are to be retained then,

as your question suggests, they must be retained from such distribution. Section 2624 speaks of retention from the "revenues," a word which is appropriately used only with respect to general taxes. No other section specifies just how this apportionment shall be charged when the revenue due the county are distributed in the county treasury to the respective funds. The only section even remotely bearing upon this question is the section dealing with the settlement between the county auditor and the county treasurer. That section, which is Section 2597, provides that the treasurer's fees shall be deducted "from the several taxes charged on the duplicate in a just and ratable proportion." If this section is to furnish an analogy we would have to read the word "taxes" in a sense broad enough to include "assessments" in order to arrive at the conclusion that collection fees, which for the purpose of the present discussion are assumed to be properly chargeable, are to be deducted from the assessments. Suppose, however, this thought is pursued a step further; if the collection fees are properly chargeable and are to be deducted from the assessments, then how is the deficiency in the assessment account to be made up? This is the exact question submitted by you. It, however, involves another assumption, namely, that a deficiency in the assessment account will be thus produced. This would be the case if the collection fees do not constitute a part of the total cost and expense of the improvement. The state and county road statutes have been examined and without quotation of them it may be said that they do not expressly or by inference provide that such fees are to be considered in arriving at the total cost and expense of the improvement for which assessments are to be made. In the absence of any such express provision the rule is that such fees are not a part of the cost of the improvement (see *Spangler v. Cleveland*, 35 O. S., 469.) One of the reasons which was given by the supreme court in the case cited, which involved municipal assessments, does not exist in the case of county assessments, viz., uncertainty as to whether or not the cost of collection is an expense that will necessarily be incurred. The other reason suggested by the court in that case does, however, exist. Under Section 2624 the percentages are computed on the total collections. There is no fee attributable to collecting assessments, as such. It would be impossible, therefore, except by arbitrary action, to assign any given percentage as an expense incurred in the collection of special assessments, as such. This point is worthy of consideration as reflecting upon the main issue, for it tends to show that Section 2624 was intended as prescribing a rule of compensa-

tion for the collection of general taxes only, as distinguished from special assessments.

From all these considerations it is the opinion of this department that the supposed auditor's fees for collecting special assessments could not be a part of the total cost and expense of a road improvement for which such assessments are to be made. In addition to the above it might be said that to hold otherwise would involve the anomaly of allowing the auditor to collect fees upon his own fees, if they are to enter into the principal sum of the assessment to be apportioned and collected by him.

This conclusion leaves us in the following dilemma: Either, as suggested in your question, there must always be a deficiency in the special assessment account due to the deduction of the supposed auditor's fees from the collection of special assessments without reimbursement from the property owners, and requiring us to search elsewhere for means of making up this deficiency; or else such fees when retained are to be charged against some fund other than the special assessment fund.

The first horn of the above stated dilemma must be eliminated from consideration. There is no way in which to make up this deficiency unless it be Section 6929 of the General Code, as to county improvements, and Section 1223 of the General Code, as to state improvements. These sections, respectively require the commissioners to provide before the issuance of bonds for the levy and collection of a tax on all the taxable property of the county "to cover any deficiency in the payment or collection of any special assessments or township taxes anticipated by such bonds."

But in the supposititious case under discussion there has been no deficiency in the collection of the assessments; all have been paid and collected as levied. Again, this provision would care only for a case where bonds had been issued, whereas it is possible for a road improvement to be made and assessments to be levied without the issuance of bonds.

Careful examination has failed to disclose any other manner of making up the deficiency which would exist where this horn of the dilemma followed. The existence of such a deficiency without any means of supplying it would be an impossible result.

We are thus thrown upon the other horn of the dilemma and must now search (always on the assumption that the fees in question are properly chargeable and subject to retention) for the proper county fund against which the sums retained on account of the collection of the assessments are to be charged. Such fund cannot be

the road improvement fund authorized to be levied either by Section 6926 or by Section 1222, for these sections relate to levies for some proportion of the "compensation, damages, costs and expenses of such improvement" (Section 6926.) This phraseology is substantially the same as that which appears in the assessment provisions themselves. Having reached the conclusion that the supposed collection fees are not proper items of cost and expense of the improvement for the purpose of assessment, similar reasoning compels the holding that they are not to enter into the cost of the improvement for the purpose of the tax levy. Moreover, the tax levies are to meet the county's proportion only, and we would have to reach the conclusion not only that the collection fees constitute items entering into the cost and expense of the improvement, but also that they constitute items entering into the county's proportion of such cost and expense. This it seems impossible to do.

Your letter suggests the possibility of retaining the fees and charging them to the general county fund. This is a possible result once it has been determined that the payment of such fees so retained is a proper general county expense. Here the general principle comes into play that no money is payable, either directly or indirectly, out of the county treasury except in pursuance of law. In fact, this principle appears in the Constitution of the State, Article X, Section 5. No law expressly makes such fees a general county charge. If they are a general county charge it is only by the most remote of inferences, the real basis of which is that there is no other way to provide for their payment.

When, after pursuing the lines of thought just outlined, we return to the express language of Section 2624 and note again the fact that it does not refer to special assessments and that its language is throughout appropriate only as regards collections on tax duplicates, as such, the conclusion that it should be limited to its exact terms becomes irresistible. Indeed, there may be said to be another general principle, which is that all official services are presumed to be gratuitous or compensated for by the usual emoluments attaching to the office and that no fees are allowable save such as are authorized expressly by law. To warrant the inclusion of special assessment collections in the duplicate collections on the basis of which the auditor's percentages are computed, a very broad construction of Section 2624 is required, which does considerable violence to its letter and involves us in a maze of doubtful and almost impossible consequences.

For all these reasons, it is the opinion of this department that county auditors are not entitled to any fees whatsoever under existing statutes for collecting road and highway assessments.

With respect to county treasurers, however, the situation is different. The compensation of these officers is regulated by Section 2685 of the General Code, which provides in its present form as follows:

"On settlement semi-annually with the county auditor, the county treasurer shall be allowed as fees on all moneys collected by him on any tax duplicates other than the liquor, inheritance and cigarette duplicates, the following percentages:

On the first one hundred thousand dollars, one and one-half per cent.; on the next two million dollars, five-tenths of one per cent.; on the next two million dollars, four-tenths of one per cent.; and on all further sums, one-tenth of one per cent. Such compensation shall be apportioned ratably by the county auditor and deducted from the shares or portion of the revenue payable to the state as well as to the county, township, corporations and school district; and all moneys collected on liquor, and cigarette duplicate, one per cent., on all moneys collected otherwise than on the said duplicates, except moneys received from the state treasurer or his predecessors in office or his legal representatives or the sureties of such predecessors, and except moneys received from the proceeds of the bonds of the county or of any municipal corporation, five-tenths of one per cent., on the amount so received, to be paid upon the warrant of the county auditor out of the general fund of the county."

The phraseology in this section which is not found in Section 2624 is the following:

"On all moneys collected otherwise than on the said duplicates *** five-tenths of one per cent. on the amount so received, to be paid upon the warrant of the county auditor out of the general fund of the county."

Here is an express residuary clause applicable to all collections not provided for in the preceding portions of the section. This language is broad enough, in the opinion of this department, to entitle the county treasurer to charge and receive fees for collecting special road assessments. But this provision does not leave to inference the source from which these fees are to come; it expressly provides that they shall be paid out of the general county fund on the warrant of the county auditor. This provision constitutes a complete answer to your first question so far as the treasurer's fees are concerned, and obviates the difficulties suggested in your statement of the question.

It is therefore the opinion of this department that county auditors are not entitled to any fees whatsoever in connection with the collection of county road assessments. County treasurers are entitled to fees of one-half of one per-cent. on the amount of such collections, to be paid upon the warrant of the county auditor upon the general fund of the county, and not deducted from the special assessments.

The Director of Public Service May Legally Publish Notices to Water Consumers Relative to the Proper Time and Payment of Water Bills, and Payment for Such Publication May Lawfully be Made as an Expense of Conducting and Managing the Municipal Water Works.

(Opinion No. 938, dated January 15, 1920.)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of your request for the opinion of this department as follows:

"Is a notice to consumers relative to the proper time and payment of water bills in place of notification by mail a legal publication chargeable to public funds."

Sections 3955 to 3981 are pertinent to your inquiry. General statutory power of council of a municipality to acquire, own and operate municipal water works, is given in Section 3955. Since 1912, by the adoption of Section 4, Article XVIII, such power is granted by the constitution to municipalities. The management, conduct and control of the municipal water works is placed by Section 3956 in the director of public service. By Section 3957 he is empowered to make and enforce such by-laws and regulations "as he deems necessary for the safe, economical and efficient management and protection of the water works."

Section 3958 empowers the director to assess and collect water rents "for the purpose of paying the expenses of conducting and managing the water works."

Section 3959 provides:

"After paying the expenses of conducting and managing the water works, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest of any loans made for

their construction or for the creation of a sinking fund for the liquidation of the debt."

The remaining part of this section provides that the "amount authorized to be levied and assessed for water works purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever."

Of course the cost of such legal publication is not payable from the funds so levied and collected and so far as your inquiry may relate to these funds, it may be answered here in the negative.

The first part of this section indicates a different rule as to the use and the disposition of the net surplus from the water works. While this sentence does not specifically relate to your question, its direct descriptions of such surplus, viz., that existing "after paying the expenses of conducting and managing the water works" impliedly authorize the payment of the expenses of conducting and managing such water works.

Section 3960, providing that the income from such water works shall be kept as a separate fund, places such fund "when appropriated by council * * * subject to the order of the director of public service."

Section 3961, authorizing the director to make certain contracts, is as follows:

"Subject to the provisions of this title, the director of public service may make contracts for the building of machinery, water works buildings, reservoirs and the enlargement and repair thereof, the manufacture and laying down of pipe, the furnishing and supplying with connections all necessary fire hydrants for fire department purposes, keeping them in repair, and for all other purposes necessary to the full and efficient management and construction of water works.

No provision of title 12 of which this section is a part, and to which it refers, is found to contain any prohibition against the publication of a notice to water consumers. On the contrary, in the sections preceding Section 3960, it is quite clear that the management and conduct of the water works is very largely entrusted to the director of public service.

Sections 4229, 6251 and others, requiring certain notices to be published in a certain manner, are not pertinent, but, it may be pointed out, are mandatory and of such a character that the rule of

"the expression of the one excludes the other" has no application to the question of the authority to publish notices necessary to the efficient management of a public enterprise.

It may be pointed out that no specific authority exists for the payment of postage in mailing municipal water or electric light accounts, but such authority is implied ex necessitate from the expressed authority to one operating and managing the utility.

It is believed, in view of the clear implication arising from these sections, that the director of public service may legally publish notices to water consumers relative to the proper time and payment of water bills, and that payment for such publication may lawfully be made as an expense of conducting and managing the municipal water works.



Every Person in the Service of the County or Township Who is Required to be Elected as Provided by Law, is a County or Township Official Under the Provisions of Section 1465-61 General Code, and Every Other Person Distinctly in the Service of the County or Township is an Employe Within the Meaning of Said Section. Assistant Prosecuting Attorneys, Deputy County Auditors, Deputy County Sheriffs, Deputy County Supervisors, Court Bailiffs and Court Stenographers Are Employes Within the Meaning of Section 1465-61 General Code.

(Opinion No. 936, dated January 15, 1920.)

Hon. Louis H. Capelle, Prosecuting Attorney, Cincinnati, Ohio.

Dear Sir: Your letter of recent date is as follows:

"The question has arisen in this county as to who comes within the meaning of the terms 'persons in the service of the state, county, city, township, incorporated village or school district' and 'officer of the state, county, city, township, incorporated village or school district' as used in Section 1465-61 of the General Code of Ohio, under the Industrial Commission.

The auditor of the state has requested our county auditor to furnish him with the salaries and wages expended in this county during the last fiscal year. Inasmuch as the statute exempts officials, many of the heads of departments in this county are at a loss to know whether or not deputies and other subordinates can properly be brought under the heading of officials.

We, therefore, respectfully request an opinion as to the class in which the below mentioned fall:

Assistant prosecuting attorney.
Deputy county auditors.
Deputy county sheriffs.
Deputy county surveyors.
Court bailiffs.
Court stenographers.

We will appreciate it very much if some interpretation could be placed upon the statute that would lay down a working rule whereby the status of any subordinate could be ascertained for the purpose of workmen's compensation.

The county auditor will not compile the information requested by the auditor of the state until he has a ruling on the question and we therefore respectfully request your usual prompt action."

Section 1465-61 General Code (108 O. L., 316), upon which you desire an interpretation, is in part as follows:

"The terms 'employee,' 'workman' and 'operative' as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws."

Inasmuch as your inquiry relates to the status of certain positions of the county, in view of the statute above quoted, this opinion will treat solely with the application of said statute with reference to those in the service of the county and township.

Under the provisions of said statute every person in the service of the county and township shall be regarded as an employee except county and township "officials." The word "official" as used in this statute is synonymous with the word "officer." It therefore follows that every person in the service of the county or township is an employee, as contemplated by the statute, except "county or township officers."

Section 1 of Article X, of the Constitution of Ohio, provided:

"The General Assembly shall provide, by law, for the election of such county and township officers as may be necessary."

In view of this constitutional provision every county and township officer must be elected. While there are numerous decisions of the courts indicating what positions are "offices" requiring the incumbents to be elected in accordance with said constitutional provision, it is not regarded as essential to make further reference to said decisions herein. However, it may be said that the statutes now designating the elective offices of the counties and townships of the state are, generally speaking, in accord with the decisions of the courts relative to the operation of Section 1, Article X.

It is the opinion of this department that every person in the service of the county or township, who is required to be elected as provided by law, is a county or township official under the provisions of Section 1465-61, and that every other person distinctly in the service of the county or township is an "employee" within the meaning of that section.

In specific answer to your inquiry, it is believed that assistant prosecuting attorneys, deputy county auditors, deputy county sheriffs, deputy county surveyors, court bailiffs and court stenographers are employees within the meaning of Section 1465-61 General Code.



A Privately Owned Hospital That Charges Some of Its Patients Who Are Able to Pay, But Also Receives Charity Patients, and is Not Operated for Profit, is Entitled Under Sections 3963 and 14769, to Free Water From a Municipality.

(Opinion No. 940, dated January 15, 1920.)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgement is made of the receipt of your recent request for the opinion of this department as follows:

"Under date of December 5, 1919, this department submitted to you for written opinion a number of questions relating to free water under Section 3963 and 14769 General Code.

"May we ask you, please, in considering the questions involved, that we may also have answer to the following:

"Under sections mentioned, is a privately owned hospital in a municipality that charges patients who are able to pay but receives some charity patients who are not able to pay, entitled to free water?

"Is a hospital of this nature that receives pay from the city for the city poor received at such hospital, entitled to free water?"

Your attention is directed to the discussion of Sections 3963 and 14769, in the opinion rendered on your request of December 5, 1919, referred to in your letter. Because of this recent expression of the views of this department in that opinion, it is not deemed necessary to repeat the discussion of those sections and they are therefore made a part of this opinion by reference.

Your first question is whether a privately owned hospital that charges patients who are able to pay but receives some charitable patients who are not able to pay, are entitled to free water under these sections. Your letter does not state whether the hospital in question is one conducted for profit or not for profit. In fact the question is stated generally and must be answered as such, so that it may not be applied to specific cases where the facts may be different.

It must be noted that under this section the ownership of the institution is immaterial and that, as stated by Judge Nichols, in the case of *Rose Institute v. Myers*, 92 O. S., 262:

"It is the use of the property which renders it exempt or non-exempt." See also case of *O'Brien v. Hospital Association*, 96 O. S., 1.)

A decisive factor in the determination of this question is absent in your statement of facts, viz., whether or not the institution is in fact conducted for profit. The fact that some of the patients are pay patients and some are charity patients would not of itself fully determine the character of the institution, as it might be possible for the institution to receive some pay patients, which would make it possible to carry out or promote its main purpose of caring for the charity patients.

This was considered by the attorney general in an opinion found in Volume 1 of the *Opinions of the Attorney General for 1918*, page 800, in which, on page 808, he said:

"As I see it, therefore, the director of public service is not entitled to make any charge whatsoever for water furnished to hospitals which are in point of fact charitable institutions, by which I mean, whether they make a charge to those who are able to pay or not, they are not operated for profit."

So that on this line of reasoning, sanctioned by the supreme court in the case above referred to, the question is the use and purpose of the institution, and its charitable character under this section may be said to be determined whether it is operated for profit or not for profit.

Without attempting to announce a rule applicable to any and all cases, your question may be answered in this way; that a privately owned hospital that charges some of its patients who are able to pay, but also receives charity patients, and is not operated for profit, is entitled under Sections 3963 and 14769 to free water from the municipality.

Your second question is answered by the same considerations expressed in the discussion of the first question, and it is believed that the conclusion announced therein is applicable to and decisive of the second question, so that its separate consideration is deemed unnecessary.



There is no Statutory Authority in the County Commissioners in Connection With State Aid Improvements Under Sections 1178 Et Seq., General Code, to Exercise Their Option of Providing an Assessment Zone of One-Half Mile or One Mile in Width on Either Side of the Road to be Improved When the Adoption of a Zone of Such Width Would Extend the Assessment Areas Into An Adjoining County.

(Opinion No. 925, Dated January 12, 1920.)

Hon. Harry A. Smith, Prosecuting Attorney, Caldwell, Ohio.

Dear Sir: Your communication of recent date is received submitting for opinion the following:

"Where a main market road or inter-county highway is being improved by the State Highway Department in conjunction with the County Commissioners under Section 1191 et seq., or what is popularly known as the state aid plan, and the county commissioners have decided to make the assessment area one mile on each side of said road, and said road is situated so near the county line that said one mile assessment area extends across the line into an adjoining county, under what sections or by what procedure can the assessments be levied, if at all, on the lands within said one mile area in said adjoining county?"

If the road in question were to be improved by the county commissioners under authority of Sections 6906 et seq., General Code, instead of under the so-called state aid plan provided for by Sections 1178 et seq., General Code, the answer to your question would be found in Section 6941, General Code, which as amended 107 O. L., 104, reads as follows:

"When the proposed improvement is wholly within one county but within less than the legal assessment distance of

the county line and a petition is filed asking for such improvement, signed by fifty-one per cent. of the persons to be especially assessed therefor, such improvement shall be regarded as a joint county improvement, and shall be made in accordance with the provisions of sections 6930 to 6939 inclusive of the General Code of Ohio in so far as said sections are applicable."

No similar statute is found in the series relating to state aid projects, the nearest approach to it being Section 1220, General Code, relating to roads "upon a county line." The provision giving the option to the commissioners of including within the assessment zone other than property immediately abutting the improvement is found in Section 1214, General Code, which reads in part:

"And provided further that the county commissioners by a resolution passed by unanimous vote may make the assessment of ten per cent. or more as the case may be of the cost and expense of improvement against real estate within one-half mile of either side of the improvement or against the real estate within one mile of either side of the improvement."

This language in itself negatives the idea of any authority in the commissioners to create an assessment zone which would be of less width on one side of the road than on the other. The plan of extending the assessment zone to the width of one-half mile or one mile as the case may be, is a mere extension of the abutting land plan, as was pointed out in an opinion of this department dated December 12, 1907, appearing in Opinions of Attorney General for 1917, at page 2305. Furthermore, the legislature by the adoption of the above quoted Section 6941 in connection with improvements by the county commissioners, has itself put a construction on the manner of operation of the plans of a one-half mile assessment zone and a one mile assessment zone; for it is quite plain that if the legislature had intended to leave to the commissioners the option of creating zones of unequal width on the sides of the road, there would have been no necessity for Section 6941.

For these reasons then, you are advised that there is no statutory authority in the county commissioners in connection with state aid improvements under Section 1178 et seq. General Code, to exercise their option of providing an assessment zone of one-half mile or one mile in width on either side of the road to be improved when the adoption of a zone of such width would extend the assessment area into an adjoining county. As applied to the case you state, the only course open to the commissioners is to confine the assessment area either to the one-half mile zone or to the abutting lands.

SECRETARY OF STATE

NEW CORPORATIONS

Riverside Castle Hall Co., Cleveland, \$10,000. Charles L. Selzer, Wm. H. Schaner, Henry C. Maulberger, W. C. Ott, Wilbur J. Winters, William A. Shaw, Edw. B. Steller, James H. McKirahan, Lewis Peters, August C. Haner.

Evans Show Co., Massillon, \$25,000. John J. Evans, E. G. Willison, Charles G. King, Arthur T. Ellis, A. J. Waltz.

J. Remesch Pattern Co., Cleveland, \$15,000. William F. Henning, Anna Henning, Edna M. Henning, Dorothy A. Henning, Charles Bindernagel.

Brown Clay Products Co., Canton, \$75,000. I. E. Brown, T. H. Leahy, J. B. Snyder, J. A. Bishop, K. E. Rice, C. B. Gerwig.

Miles & Smith Co., Cleveland, \$10,000. W. R. Jordan, Laura L. Miles, Fay M. Smith, Dewey W. Miles, Chas. J. Smith.

Midvale Garage Co., Cincinnati, \$15,000. Morton I. Bruce, C. K. Smith, J. R. Bruce, Aileen Collins Bruce, Emma D. Bruce.

Greater Akron Improvement Co., Akron, \$10,000. W. E. Young, A. W. Doyle, D. W. Maxon, M. M. Ragle, R. I. Moore.

Live Stock Profit Sharing Co., Cleveland, \$10,000. Otto Spark, E. B. Underhill, F. G. Behringer, T. D. Lamb, J. L. Vaughan.

Cleveland Heights Savings & Loan Co., Cleveland Heights, \$500,000. John C. Sanders, Wm. Greenbaum, A. T. Fischer, F. C. Dietzel, A. A. Engler.

Woodland Terminal Co., Cleveland, \$1,000. John W. Roy, Robert F. Bingham, C. W. Sellers, Jerome C. Fisher, Stanley L. Orr.

Advance Motor Sales Co., Dayton, \$15,000. W. W. Hendrix, F. H. Stachler, H. G. Kemper, I. I. Hauer, Isaac Harner.

Cleveland Courtland Co., Cleveland, \$150,000. I. C. Senn, Peter E. Klein, A. A. Engler, N. A. Babinec, A. C. Schapiro.

Forest City Bottling Co., Cleveland, \$100,000. A. Piotrowski, M. P. Kniola, C. J. Bonkoski, B. E. Orlikowski, F. Smetena, J. C. Konlarski, A. F. Korany, A. M. Piotrowski.

B. D. McLaughlin Engineering Co., Cleveland, \$10,000. Albert S. Hill, J. F. Brobson, H. E. Strobel, L. A. Halford, S. D. McLaughlin.

Grain Products Co., Cincinnati, \$25,000. F. G. Doyle, H. M. Fite, George C. Willson, J. F. Cloke, C. M. Schwelgert.

People's Baking Co., Cleveland, \$50,000. James Vrzak, Emanuel Ruzicka, Jos. Bohac, Jos. Rechicha, John Kamensicky.

Summit Tool Co., Toledo, \$30,000. Wm. J. Fritsche, Mark Winchester, Mary Chisholm, Leo J. Fox, Mace M. Murphy.

Ohio Chief Oil Co., Columbus, \$25,000. Fred Essex, O. E. Harrison, T. J. Frasure, C. J. Maddux, H. C. Allread.

Pigott Steel Co., Cleveland, \$2,500. Thomas E. Pigott, Reginald A. Jopling, Clayton C. Oberle, Boyd Doty, Amy I. Pigott.

Hertz Building Co., Cleveland, \$150,000. G. E. Fischer, H. M. Berg, M. U. McFadden, J. F. Friedl, William M. Byrnes.

Stowe Lahusen Co., Cincinnati, \$10,000. Stowe Lahusen, George Lucas, Fritz G. Salmar, Henry J. Lucas, Chas. Weigel.

Marbleite Mfg. Co., \$20,000. Theodore Hostetter, Eli E. Culver, John W. Ashbrook, Gustav Cummrow, M. Ross.

Hoefler & Stoecklein Co., Dayton, \$75,000. Frank J. Hoefler, William E. Stoecklein, John J. Stoecklein, Olivia M. Hoefler, Emma Stoecklein.

Bryan Hardware Implement Co., Bryan, \$35,000. Emery Bowman, Harry W. Gardner, Bess M. Gardner, Alice K. Gardner.

Metallic Construction Co., Dayton, \$30,000. Albert Davis, Archie Sherer, Roland E. Condit, N. W. Mearick, Herbert E. Kreitzer.

The Perfection Parts Mfg. Co., Cleveland, \$100,000. R. H. Reiter, Charles C. Benner, Don H. Harter, A. W. Walker, Velma Blount.

Dandy Kake Co., Akron, \$50,000. C. C. Bentz, Samuel Stanson, Herman Freed, W. E. Snyder, Helen L. Gault.

Paris Mfg. Co., Cleveland, \$110,000. F. F. Adair, E. H. Krueger, C. R. Daris, M. A. Sellberg, M. R. Burnage.

Massillon Garage Co., Massillon, \$36,000. John T. Miller, Albert W. Lane, Ralph E. Bowers, Edw. Bowers, Jennie Miller, Anne L. Lane.

S. J. Silverman Realty Co., Youngstown, \$25,000. S. J. Silverman, A. L. Levine, J. Magid, Frank A. Silverman, Herman J. Weber.

Atkins Realty Co., Cleveland, \$10,000. C. Atkin, Lena Atkin, Jacob Bushkoff, K. L. Byrne, Edith Spellman.

Marion Overland Co., Marion, \$50,000. Marion L. McDaniel, Bert E. Bumgarner, Wm. S. Hunter, Lawrence W. McDaniel, Chas. L. Justice.

City Laundry & Cleaning Co., Cleveland, \$100,000. Louis Englander, David E. Bowden, D. A. Christopher, E. M. Day, Carl Dautel.

Cuyahoga Material Co., Cleveland, \$150,000. I. Grohs, P. Nuederle, S. I. Powell, J. C. Frederick, M. L. Harrington.

Sparks-Withington Co., Cleveland, \$1,250. David L. Johnson, M. C. Byrnes, B. E. Robertson, M. C. Myers, L. M. Henders.

Lynn-Harvey Electric Co., Columbus, \$50,000. Harry Lynn, A. E. Harvey, Margaret Spencer, A. L. Schick, Edgar L. Weinland.

Cleveland Wall Paper Co., Cleveland, \$10,000. William M. Thorpe, Fred C. Moore, A. J. Rager, J. Osterland, M. C. Snider.

Cincinnati Merchandise Co., Cincinnati, \$25,000. Max Greenwald, Chas. Mesch, Arthur Reinberger, Samuel Greenwald, Wm. C. Klein.

Delta Theta Tau House Co., Cleveland, \$12,000. C. A. Bever, V. C. Fugman, H. C. Haserodt, M. W. Vickery, Roy Stevens.

C. D. Eckler Co., Sandusky, \$10,000. Conrad D. Eckler, Edw. N. Ashley, Harry J. Eckler, Henry J. Rudolph, Edw. H. Watzel.

National Industrial Engineering Co., Cincinnati, \$25,000. Richard Smetthurst, R. B. Smetthurst, R. Smetthurst, Jr., R. A. LeBlond, E. S. Morrissey.

Popular Eugene and Sanitation Publishing Co., Cleveland, \$10,000. H. E. Varga, W. H. Hagan, M. C. Jirasck, V. C. Falle.

Central Milk Producers' Co., Urbana, \$20,000. I. N. Neds, H. P. Miller, Ray Vanschoyck, F. A. Owen, John E. Baldwin, C. W. Smiley, Chas. Brand.

Little York Farms Co., Cleveland, \$10,000. Wm. A. Evans, L. W. Griffin, Edw. Gerstacker, W. D. Brown, S. F. Daerr.

Deer Lodge Mortgage Co., Cleveland, \$25,000. Thos. H. Jones, King Tolles, C. F. Reavis, Jr., Henry A. Marting, Gardner Abbott.

L-C-H Electrical Service Co., Dayton, \$25,000. Clarence A. Haines, Leonard E. Boyer, A. L. Gaddis, J. B. Brown, Harry H. Prugh.

Buckeye Refiner Producing Co., Lima, \$150,000. Isaac Bronfen, Benj. Rakowsky, Jos. Bronfen, Samuel G. Parks, John J. Klay.

Cincinnati Pulley Machinery Co., Cincinnati, \$1,000. L. B. Patterson, J. G. Hey, D. L. Carpenter, A. E. Patterson, L. W. Miles.

Star Developing Co., Akron, \$150,000. Fred M. Hall, Robt. Dickey, Jack Weaver, Milo Zimmerman, Norman B. Moore.

Kurtz Motor Car Co., Cleveland, \$10,000. Allen J. Shaw, J. F. Pfaff, George W. Shaw, R. S. Force, W. R. Winn.

Southeastern Coal Co., Cincinnati, \$25,000. Walter A. Knight, Carl Phares, Lewis M. Hosea, Daniel J. Butler, Norma D. Berger.

Atlas Metal Co., Cleveland, \$100,000. A. Lipkowitz, Samuel Horwitz, F. B. Draeger, M. A. Friedman, W. K. Stanley.

Middle States Discount Co., Cleveland, \$3,000,000. Henry A. Marting, C. F. Reavis, Jr., Leslie Nichols, J. M. Garfield, R. C. Hyatt.

Coldmaker Machine Co., Toledo, \$50,000. E. J. Farquhar, J. R. Nufer, Robert Buchanan, C. M. Eyser, H. H. Zimmerman.

J. L. Smith & O. H. Hackenburg Auto Sales Co., Akron, \$50,000. J. L. Smith, O. H. Hackenburg, R. M. Smith, C. G. Luke, G. D. Mitchell.

East Side Amusement Co., Toledo, \$200,000. A. J. Smith, L. E. Smith, Jas. A. Beldler, Martin G. Smith, John H. O'Leary.

General Interchangeable Tool Co., Cleveland, \$1,000. Henry A. Pollack, Wm. T. O'Brein, Marguerite E. Temple, Wm. R. Rothstein, Jas. J. Maguire.

White Cloud Laundry Co., Cincinnati, \$100,000. Joseph W. Crothers, Sr., J. W. Crothers, Jr., R. F. Crothers, George M. Crothers, Ida W. Crothers.

Frederichs, H. J. Fiehl, Grace M. Walsh, G. S. Sarstedt.

Consolidated Allotment Co., Cleveland, \$10,000. Charles A. Alexander, John H. Schultz, K. T. Siddall, I. M. McDonough, M. I. Huelow.

Engels & Krudwig Co., Sandusky, \$150,000. A. C. Krudwig, C. L. Engle, Charles W. Humrichouse, L. J. Ullman, Henry P. Schroeder.

C. W. Stuart Realty Co., Massillon, \$100,000. C. W. Stuart, Joseph B. Immler, I. L. Taggart, Horatio W. Wales, Floyd C. Snyder.

Agricultural Engineering Co., Columbus, \$10,000. Wendell P. Miller, James A. Howenstine, H. P. Miller, Mary A. Parks Ives, Frederick W. Ives.

North Lawrence Aluminum Co., North Lawrence, \$30,000. William H. Longworth, Thomas H. Longworth, Harmon S. Richardson.

Holtkamp-Fortman Co., Kalida, \$30,000. Edw. C. Holtkamp, John W. Fortman, Joseph Kahle, Charles C. Borman, Edw. J. Miller.

Geiz & Manderbaugh Garage Co., Canton, \$10,000. Fred W. Manderbaugh, Charles P. Geib, Carl J. Palmer, Robert B. Miller, Lorin C. Wise.

Foraker Farmer Exchange Co., Foraker, \$20,000. M. C. Mathews, B. D. Wray, Elgin Wilcox, Wayne E. Putnam, B. O. Durbin.

Oakley Lumber Co., Cincinnati, \$40,000. H. C. Stanforth, R. Ruzicka, Charles H. Gende, H. N. Foreman, Charles H. Kelley.

Ewing Drug Co., Carey, \$25,000. J. D. Ewing, L. S. Hart, Cora Hart, Merle E. Blue, Elizabeth S. Ewing.

Advance Specialty Co., Columbus, \$10,000. N. F. Burgoon, M. E. Burgoon, R. F. Burgoon, Earl Evans, C. Burgoon.

Bowling Green Building Co., Bowling Green, \$100,000. George W. Fersanside, B. H. Urschel, B. J. Franey, J. R. McDowell.

Woodland Park Co., Akron, \$50,000. Ernest E. Hackathorn, Edw. Hackathorn, Mare B. Hackathorn, Velma Blount, A. M. Walsh.

Lincoln Garage & Storage Co., Columbus, \$15,000. C. T. Cawrse, A. B. Brightman, J. E. Zangmaster, Robert O'Brien, Sherman B. Randall.

Weaver Aircraft Co., Lorain, \$205,000. George E. Weaver, Elsood J. Junkin, Clayton J. Brunner, Vincent M. Caywood, A. A. Hess.

Toledo Plaster & Supply Co., Toledo, \$500,000. Robert L. Witters, Harry N. Hansen, William X. Manning, Daniel A. Hemley, Dudley C. Hamley.

Hackathorn Realty Co., Akron, \$10,000. Ernest E. Hackathorn, Edw. Hackathorn, Marie B. Hackathorn, Velma Blount, A. M. Walker.

Ohio Wilson Welding & Repair Co., Cleveland, \$50,000. J. Paul Lamb, E. A. Foote, E. S. McGowan, R. C. Wheeler, Benj. D. Holt.

Tri-State Steamship Co., Mentor, \$200,000. Douglas W. Miller, M. S. Thompson, Frederick L. Leckie, Tracy H. Duncan, Joseph A. Schiltz.

East Sparta Motor Car Co., East Sparta, \$15,000. Arthur E. Bowman, Henry J. Bowman, Clara B. Bowman, Zelma B. Sponhauer, Clayton R. Sponhauer.

Cramer Publishing Co., Cincinnati, \$25,000. Angie S. Cramer, Ethelbelle Allee, Charles H. Thul, Florisa F. Gilcher, H. Jenneth Rogers.

Kentucky Silica Sand Co., Cincinnati, \$25,000. Herman S. Katz, Samuel Stern, Max A. Arnold, John J. Schwarzer, John Bohn.

State Realty & Development Co., Akron, \$25,000. Elbert C. Myers, C. M. Scatterday, M. C. Stowe, B. G. Weber, James Shaw.

Donnally-Ennis Oil and Gas Co., Marietta, \$100,000. Moses W. Donnelly, John J. Ennis, Frank Fanhorst, E. Clark, Jr., E. I. Martin.

A. W. Stark Co., Cleveland, \$5,000. Conrad Hessler, E. E. A. Metzger, George Weckerling, W. O. Bayer, S. C. Taylor.

L. Rozin-Katz Co., Cincinnati, \$15,000. Louis Rozin, Morris Katz, Aaron J. Strikman, William J. Klein, Dave Katz.

Newton Oil & Gas Co., Cincinnati, \$50,000. W. K. Htrwig, W. W. Helwig, George E. Koold, Jr., M. T. Kinappenberger, William D. Codville.

Republic Sand Co., Conneaut, \$25,000. Chas. E. Marcy, Clyde A. Hure, Hugh W. Marcy, Chas. J. Dowe, Viola Marcy.

Portable Riding Club Co., Akron, \$25,000. H. N. Eaton, F. M. Harpham, G. M. Stadelman, A. G. Partridge, H. S. Firestone.

Murley Tool & Supply Co., Cleveland, \$10,000. Edwin M. Leypoldt, Wm. E. Murphey, Wm. W. Leypoldt, Dale L. Coy, Howard G. Slagle.

PUBLIC UTILITIES COMMISSION

No. 1800—In the Matter of the Application of James M. Hutton and W. B. Shawe for Authority to Abandon the Line of Electric Street Railroad Formerly Belonging to The Miamisburg and Germantown Traction Company. Prayer Granted.

(Dated December 12, 1919)

This day after full hearing, due notice of the time and place of which was given (by publication and otherwise, as provided by law) to all parties in interest, this matter came on for final consideration upon the application of James M. Hutton and W. B. Shawe, (the purchasers, judicial sale, of all the property, rights and franchises, of The Miamisburg and Germantown Traction Company) asking the consent and authority of this Commission to abandon the street railroad, formerly of The Miamisburg and Germantown Traction, so acquired by them as aforesaid, and to dismantle the said proptery.

Upon consideration whereof and being fully advised in the premises, and having due regard for the welfare of the public and the cost of operating said line of electric railroad, the Commission finds that said line of electric railroad was in operation for more than five years previous to the discontinuance of service thereupon, and is satisfied that the abandonment of the same is reasonable and should be formally authorized. It is, therefore,

Ordered, That the said James M. Hutton and W. B. Shawe be, and hereby they are authorized to abandon the line of electric railroad formerly of The Miamisburg and Germantown Company and, by them, recently acquired at judicial sale, and to dismantle the same. It is further

Ordered, That the authority herein granted may be exercised from and after this date.

No. 1837—In the Matter of the Application of Walker D. Hines, as Director General of Railroads Operating Cleveland, Cincinnati, Chicago and St. Louis Railroad, and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company for Permission to Close the Depot at Hartwell, Hamilton County, Ohio. Prayer Granted.

(Dated January 9, 1920.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on

for final consideration upon the application of Walker D. Hines, as Director General of Railroads operating the Cleveland, Cincinnati, Chicago and St. Louis Railroad, and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, (a corporation, whose line of railroad has, since the first day of January, 1918, been operated by the Director General of Railroads of the United States), asking the authority of this commission to close for traffic and abandon the depot now being maintained at Hartwell, Hamilton County, Ohio, and the evidence submitted on the hearing thereof:

Upon consideration whereof, and being fully advised in the premises, and having due regard for the welfare of the public, and having taken into consideration the cost of maintaining said depot as an open station, the commission is satisfied that the closing of said depot is reasonable, and finds that the prayer of said application should be granted. It is, therefore,

Ordered, That the said Walker D. Hines, as Director General of Railroads operating the Cleveland, Cincinnati, Chicago and St. Louis Railroad, and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, be, and hereby they are authorized to close for traffic and abandon the depot now being maintained at Hartwell, Hamilton County, Ohio. It is further

Ordered, That the authority herein granted may be exercised from and after the fifteenth day of January, 1920.

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No. 1860—The Cincinnati and Dayton Traction Company, Complainant, vs. Walker D. Hines, as Director General of Railroads, Operating the Cleveland, Cincinnati, Chicago and St. Louis Railroad, and The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Defendants.

(Dated January 22, 1920.)

This matter was submitted upon the pleadings and the evidence:

Upon consideration whereof, and being fully advised in the premises, the Commission finds that no passenger trains are operated upon the switch track of the defendants serving the plant of The Miamisburg Paper Company which intersects, at common grade, the track of the complainant approximately one hundred feet north of Kercher Street in Miamisburg, Ohio, and is satisfied, in consideration of the frequency of complainant's operations and the infrequency of steam railroad operations over said crossing

and the view of defendant's tracks by motormen operating the cars of the complainant approaching said crossing, that the complainant should be relieved of the duty of stopping its cars and sending an employe ahead of the same to see that the way is clear and free from danger for the passage of such cars thereover, if and as the speed of complainant's cars immediately approaching and while upon said crossing is restricted to a maximum of ten miles per hour, and that, to insure the safety and security of the public, no engine or train should be operated over said crossing by the defendants until and as the same shall have been brought to a full stop, upon approaching the tracks of the complainant, and signalled to proceed by an employe of the defendants who has preceded such train or engine upon said crossing to warn the motormen of complainant's cars of the imminence of danger. It is, therefore,

Ordered, That said The Cincinnati and Dayton Traction Company be, and hereby it is relieved of the duties of bringing its cars to a full stop and sending an employe ahead to see that the way is clear and free from danger at the point where its track intersects, at common grade, the switch track of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, now operated by Walker D. Hines as Director General of Railroads, serving the plant of The Miamisburg Paper Company, some one hundred feet north of Kercher Street in Miamisburg, Ohio. It is further

Ordered, That the speed of all cars of said The Cincinnati and Dayton Traction Company immediately approaching said crossing and while thereupon shall be so restricted that such cars shall be under perfect control, and shall, in no event, exceed a rate of ten miles per hour. It is further

Ordered, That before any train or engine of the defendants shall be operated across the tracks of complainant upon said switch track, such train or engine shall be brought to a full stop approaching said crossing and shall not proceed across the tracks of the complainant until signalled so to do by an employe of the defendants who has taken position upon said crossing to warn the motormen in charge of complainant's cars of the imminence of danger. It is further

Ordered, That the complainant be, and hereby it is notified, directed and required to erect and maintain at said crossing a legible sign bearing the legend,

**"ELECTRIC CARS NOT REQUIRED TO STOP AND FLAG.
MUST NOT EXCEED 10 MILES PER HOUR OVER CROSSING.
STEAM RAILROAD SHALL STOP AND FLAG."**

and that the authority herein granted may be exercised from and after the installation of such sign. It is further

Ordered, That the authority hereinbefore granted shall be and remain in force and effect only so long as the conditions now existing at said crossing shall continue, or until this order is modified by this Commission, and any change in the conditions at said crossing which would tend to render the operation of complainant's cars over said crossing more hazardous, shall forthwith be reported by the parties to this Commission.

*

No. 1283—The Kelly Plaster Company, Plaintiff, vs. L. E. and W. Railway, C. C. C. & St. L. Railway, and W. D. Hines, Director General of Railroads, Defendants. Finding by the Commission.

(Dated January 26, 1920.)

This matter was heard on the demurrer of the defendants to complainant's "Amendment to complaint" and upon their motion to strike same from the files.

The new matter set up in the amendment alleges in substance that The New York Central Railroad Company, by virtue of ownership of a majority of the capital stock of the Lake Erie and Western Railroad and The C. C. C. & St. L. Railroad, controls said lines and that they are no longer independent and self-controlled, and that they are no longer competing roads; that both of said roads are controlled by the New York Central Railroad Company through a common directorate; that the rolling stock of the Lake Erie and Western Railroad has been and for the most part transferred from its rails to other railroads controlled by the New York Central; that the Lake Erie and Western Railroad has practically ceased in its attempt at local freight service and that its tracks are used by the New York Central system for its own purposes. That the Lake Erie and Western so operated, is a mere side-track to The C. C. C. & St. L. Railroad. That because of this system of operation the complainant is unable to obtain cars, has been compelled to close its factory, and insists that it is entitled to a physical connection between the Big Four Railroad and the Lake Erie and Western Railroad at Castalia, Ohio.

If all of these allegations be true, would the complainant be in any better situation so far as securing cars is concerned than it is now?

At the hearing which was had on the original complaint it was shown that there is a connection between The Lake Erie and

Western and The Big Four Railroad at Sandusky, Ohio, and that whatever cars complainant is entitled to or can secure, can be furnished to it over that connection and that its product can be moved over the same route to connecting lines. An additional connection would neither put complainant on the tracks of the Big Four—if it is not already on such tracks—nor entitle it to more cars. What the complainant wants is cars and it should have them from some source.

If it is true, as claimed, that the New York Central has actual control of all three of these lines and has denuded the Lake Erie and Western of its rolling stock and is using it on other lines, such conduct is reprehensible and illegal and there should be some remedy in some tribunal to prevent the continuance of the practice, and to compel the restoration of the rolling stock of the Lake Erie and Western to that line; but an additional track connection at Castalia, will not accomplish that purpose.

If all these roads are under one control and operation, the complainant is already on the line of the Big Four. If they are not under one control and management, an additional connection will not place them there. The mere ownership of the majority of stock, unless coupled with at least some control over the operations of the respective roads would not be sufficient to place complainant on the New York Central or Big Four lines.

If the Lake Erie and Western is an independently operated road and has no facilities for serving the public, it ought to acquire some or get out of the business. It is no excuse to say it is not a paying enterprise. No railroad will be a paying enterprise if it does not equip itself to furnish some reasonable service to the public. It is a deplorable situation for a railroad to induce shippers to locate along its lines, and after they have made large investments and established a paying business, fail to furnish reasonably adequate facilities for serving them.

If the Commission has the power to grant relief to the complainant it must be upon a complaint against these roads alleging a refusal of adequate service, and upon proof that the relationship between them is such as to entitle the complainant to service from the Big Four or the New York Central or both. It may be said that the amended complaint is broad enough to warrant such relief in case proper proof is made, but this would be an entirely different question from that presented by the original complaint which has already been heard; and the Commission is of the opinion

that such a substitution of causes of action ought not to be permitted at this stage of the proceeding.

Without determining the question raised by the demurrer, the motion to strike from the files will be sustained.

3

No. 210—In the Matter of the Appeal of the Cleveland Electric Illuminating Company From an Ordinance Passed by the City of Cleveland, Ohio, March 16, 1914, Fixing the Maximum Electric Light Rate in the City of Cleveland at Three (3) Cents per K. W. Hour. Finding by the Commission.

(Dated January 21, 1920.)

The history, facts and circumstances surrounding this case are sufficiently set forth in the report of Chief Engineer, L. G. White, filed herein January 24, 1920, which report is hereby adopted and approved by the Commission and by reference is made a part of this finding.

The Commission, having carefully examined the record with a view to fixing a schedule of rates, charges and rules and regulations for the furnishing of electrical service by said Company in said City of Cleveland, Ohio, re-affirms its former finding, and for reasons therein set forth fixes the maximum rate for electrical service at ten cents per K. W. Hour, and three percent for depreciation reserve.

As pointed out in its former finding, the ordinance does not provide for a minimum charge, neither has such a charge been made by the company, and the maximum rate must necessarily be sufficient to cover the most expensive short-time service. Since the ordinance makes no provision for a minimum charge, it is assumed that the municipal council preferred a higher maximum rate rather than a minimum charge which would result in a lower maximum, and the Commission does not feel warranted in requiring a change in that respect. The Engineer's report shows, however, that the average residence consumer is paying not ten cents per K. W. hour, but six and twenty-three hundredths cents per K. W. hour.

A proper schedule for so extensive an operation as is conducted by such companies as The Cleveland Electric Illuminating Company in such great cities as the City of Cleveland, cannot be theoretically constructed with any assurance that when put into effect, it will bring the results anticipated. To be reasonably ac-

curate it must be the subject of growth under careful study of the results of actual operation under the conditions and circumstances surrounding such operation.

As stated in the engineer's report, the Commission has had the advantage of studying the operations of said company for a period of at least six years, under substantially the same schedule of rates; the return produced by each class of service, and the total results. It would be folly on the part of the Commission to close its eyes to this information and attempt to fix a just and reasonable schedule wholly upon a theoretical basis.

A careful study of the actual operations of said company under its schedule now in force, shows that the public have not paid and the company has not received from any class of service or from all, a return of eight percent upon its investment, which rate the Commission found and still finds to be a just and reasonable return on the investment. On the contrary, it is shown that operating under this schedule, the company has received a net return of seven and twenty-five hundredths percent on its investment as a whole, and of seven and forty-three hundredths percent on its investment within the City of Cleveland; that the residential business produced five and fifty-six hundredths percent upon the value of the property allotted to that class; that the commercial service in the City of Cleveland yielded a return of seven and ninety-one hundredths percent; and it appears that the residential lighting service, against which the greatest protest was made, yields the lowest return of any of the various classes. If there is any inequality in the classification of service and if any class bears more than its proportion, it is certainly not the residential lighting.

Neither from the testimony nor from the independent investigation of the Commission's engineers does it appear that there is any just cause for interfering with the present classification which has been worked out after years of actual operation, nor that any other classification would distribute the burden any more equitably.

After fixing the final value, the Commission caused an apportionment of said property to be made, segregating the value of that portion used and useful in furnishing service in the City of Cleveland from the property as a whole. The following tabulation shows the appraisement together with the additions from year to year up to July 1, 1918:

DEPARTMENT REPORTS

	Total	Cleveland	Other Territory
Inventory as of July 1, 1914	\$16,549,172.87	\$15,237,929.48	\$3,311,243.39
Additions, Class 1.....	232,127.70	137,663.29	94,464.41
Additions, Class 2 and 3.....	481,263.12	405,823.30	75,439.82
Additions, Class 4.....	32,237.79	24,592.63	7,681.16
Value July 1, 1915....	19,294,837.48	15,806,008.70	3,488,828.78
Additions, Class 1.....	821,043.97	499,203.62	321,840.35
Additions, Class 2 and 3.....	885,763.15	743,668.12	142,095.03
Additions, Class 4.....	168,422.61	122,780.08	45,642.53
Value July 1, 1916....	21,170,067.21	17,171,660.52	3,998,406.69
Additions Class 1.....	561,346.69	320,255.58	241,091.11
Class 2 and 3.....	2,119,248.36	1,610,585.54	308,662.82
Additions Class 4.....	125,125.12	99,474.47	25,650.65
Value July 1, 1917....	23,975,787.38	19,401,976.11	4,573,811.27
Additions, Class 1.....	691,317.24	536,336.95	154,980.29
Additions, Class 2 and 3.....	1,443,077.80	1,281,360.82	161,716.98
Additions, Class 4....	112,033.96	95,452.93	16,581.03
Value July 1, 1918....	\$26,222,216.38	\$21,315,126.81	\$4,907,089.57

The company's Exhibit No. 35 shows that as of July 1, 1919, the total value of said property as a whole is \$29,706,043.25, and that that portion of the same used and useful for electrical service in the City of Cleveland is \$24,353,577.01.

The cost of production and distribution of the residence, commercial, power, and other kinds and classes of service taken as a whole shows the average cost per kilowatt hour for the first hour's use, upon the basis of an eight percent return, to be as follows:

	1914	1915	1916	1917	1918	Avg.
Total System.....	.12465	.12173	.10147	.10466	.09910	.11034
Cleveland	.12415	.12021	.09830	.10008	.09606	.10776
Outside	.12732	.12971	.12011	.13457	.11958	.12626

For the year ending June 30, 1919, such average cost per kilowatt hour for the first hour's use on the total system was

11.024c and in the City of Cleveland was 10.585c. It will be noted that during this year such cost per kilowatt hour is approximately the same as the average cost for the five years from 1914 to 1918 inclusive. These costs do not purport to be the maximum costs per kilowatt hour for any particular kind or class of service, but represent the average conditions of the business as a whole. The evidence shows that in furnishing large quantities of electricity for long hours' use the cost per kilowatt hour is very much less than this average cost, and likewise that the cost of residence service per kilowatt hour and of other short hour service is considerably in excess of these average figures.

As the Commission set forth fully in its former finding the bases upon which it reached certain results, such as maximum rate, rate of return and depreciation, it is not necessary to repeat the same here.

Having determined the value of the property used and useful in furnishing the service and what sum must be realized to pay operating expenses, depreciation reserve, return on the investment, and the like, the object of regulation is to see that the rates are so adjusted as to yield that sum and no more, and with the burden distributed as equitably as possible.

The schedule contained in the report of the Chief Engineer, hereinbefore referred to, seems to accomplish these results; and the Commission finds that said schedule contains the just and reasonable rates, charges, rules and regulations for such service, and hereby orders that the same be substituted for the rates contained in the ordinance of said city fixing the rates for said service.

As it may be necessary to supervise and modify the schedule from time to time during the life of the ordinance, the Commission will exercise a continuing jurisdiction which will enable it to require a readjustment of the schedule if necessary in order to accomplish that purpose.

As the cost of the service in the metropolitan district does not greatly vary from the cost in the City of Cleveland, the same rate should apply throughout the entire district served by the company, and the same order will be made in other cases from the metropolitan district pending before this Commission.

No. 1871—In the Matter of the Application of Walker D. Hines, Director General of Railroads, Operating the Kanawha and Michigan Railroad and the Kanawha and Michigan Railway Company for Authority to Discontinue Hocking, Ohio, as an Open Station. Prayer Granted.

(Dated January 22, 1920.)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of Walker D. Hines, as Director General of Railroads operating the Kanawha and Michigan Railroad, and The Kanawha and Michigan Railway Company, (a corporation, whose line of railroad has, since the first day of January, 1918, been operated by the Director General of Railroads of the United States), asking the authority of this Commission to make Hocking, Athens County, Ohio, a prepay station, and the evidence submitted upon the hearing thereof:

Upon consideration whereof, and being fully advised in the premises, and having due regard for the welfare of the public, and having taken into consideration the cost of maintaining the depot at said station, the Commission is satisfied that the closing of said depot is reasonable, and finds that the prayer of said application should be granted if the applicants do not disturb the existing train service at said point. It is, therefore,

Ordered, That, if and as the applicants continue to stop the trains now stopping at Hocking, Athens County, Ohio, or the trains which hereafter may be substituted for the trains now operated, the said Walker D. Hines, as Director General of Railroads operating the Kanawha and Michigan Railroad, and said The Kanawha and Michigan Railway Company be, and hereby they are authorized to close and abandon for traffic the depot now being maintained at Hocking, Athens County, Ohio, and to make said station a prepay station. It is further

Ordered, That the authority herein granted may be exercised on and after the first day of February, 1920.

ATTORNEY GENERAL

An Artificial or Imitation Flavoring Extract is not Adulterated Within the Meaning of Section 5779 G. C., and Related Sections of the General Code, of Ohio, Merely Because it is an Artificial or Imitation Flavoring Extract. While Artificial or Imitation Flavoring Extracts May Lawfully be Sold in Ohio, They Must Not Contain Any Ingredients Which are Poisonous or Injurious to Health and They Must be Labeled or Branded as Imitation or Artificial. (Sections 5779 General Code and 5785 General Code). Under the Present Laws of Ohio, the Secretary of Agriculture, is Without Authority to Require That the Formula for Flavoring Extracts or a Flavoring Extract Compound for Which no Standard Exists, be Printed Upon the Label of the Bottle, Package or Other Container of the Same. A Statement of Alcoholic Contents in Terms of Percentage by Volume Will Satisfy the Provisions of Sub-section 4 of Section 5785 General Code.

(Opinion No. 930, dated January 12, 1920.)

Hon. Thomas C. Gault, Chief, Bureau of Dairy and Foods, Dept. of Agriculture of Ohio, Columbus, Ohio.

Dear Sir: Receipt is acknowledged of your letter reading as follows:

“Will you please advise me as to the proper labeling of flavoring extract or compound for which no standard exists, since the amendment of Section 5785, giving consideration also to Section 5779 and Section 1177-12, General Code, and to Ruling No. 3 in the enclosed Department Rulings?”

In personal conference it is learned that the specific points upon which you desire the opinion of this department are:

First: Whether an artificial or imitation flavoring extract is “adulterated” within the meaning of section 5779 and related sections of the General Code of Ohio, merely because it is an artificial or imitation flavoring extract.

Second: Whether the formula for flavoring extracts or compounds, for which no standard exists, must be printed upon the label of the bottle, package or other container of same.

Third: As to what is meant by the words found in subsection 4 of section 5785 G. C. (100 O. L. 460), to-wit:

“the quantity by volume of alcohol in said extract.”

(1) Section 5779 G. C., so far as here material, says:

"A flavoring extract is adulterated within the meaning of this chapter * * (4) if it is an imitation of, or is sold under the name of another article."

Unquestionably the above-quoted provision is susceptible of a construction which, if adopted, would furnish an affirmative answer to your first question. The effect of such an answer would be to prevent in Ohio the sale or manufacture for sale, of all flavoring extracts or flavors not produced from the natural fruits, including all artificial or imitation extracts or flavors produced by the synthetic combination of fruit ethers.

The provisions of what is now known as section 5779 G. C. became law in 1909 upon the passage of S. B. 112, 100 O. L. 105. The title to that measure was: "An Act to amend section 5 of an act entitled * * *, by adopting the federal standards for flavoring extracts. Upon reference to the federal Food and Drugs Act, effective June 30, 1906, it is plain to be seen that section 5779 G. C., and in fact many other sections of the Ohio pure food law, are copied from the federal law. For example, where section 5779 G. C. says:

"A flavoring extract is adulterated within the meaning of this chapter * * if it is an imitation of, or is sold under the name of another article."

the federal act (Section 8) says:

"That for the purposes of this Act an article shall also be deemed to be misbranded. In case of food: First. If it be an imitation of or offered for sale under the distinctive name of another article."

The word "food" in the federal act includes flavoring extracts (See Sec. 6).

It will be seen that the one law (the state law) calls the unlawful act "adulteration," while the other law (the federal law) calls it "misbranding." It is not perceived, however, that this difference is of any significance in this connection, as each act punishes both adulteration and misbranding.

Inasmuch as section 5779 General Code was apparently copied from the federal food and drugs law, we regard as very persuasive the federal view of the point in question. Without doubt the federal authorities consider lawful, under the federal food and drugs act, artificial or imitation flavoring extracts, provided certain conditions are met—among them, that such extracts are designated in such a way as to indicate the fact of imitation. For instance, in

Food Inspection Decision No. 47, promulgated December 13, 1906 by the federal secretary of agriculture, the following appears:

"Numerous inquiries are received regarding the proper designation of products made in imitation of flavoring extracts or in imitation of flavors, such products include 'Imntation vanilla flavor, which is made from such products as tonka extract, coumarin, and vanillin, with or without vanilla extract. They may also include numerous preparations made from synthetic fruit ethers intended to imitate strawberry, banana, pineapple, etc. Such products should not be so designated as to convey the impression that they have any relation to the flavor prepared from the fruit. Even when it is not practicable to prepare the flavor directly from the fruit, 'imitation' is a better term than 'artificial.'

These imitation products should not be designated by terms which indicate in any way by similarity of name that they are prepared from a natural fruit or from a standard flavor. The term 'venallos,' for instance, would not be a proper descriptive name for a preparation intended to imitate vanilla extract. Such products should either be designated by their true names, such as 'vanilla and vanillin flavor,' 'vanillin and coumarin flavor,' or by such terms as 'imitation vanilla flavor' or 'vanilla substitute.'"

In the case of *United States vs. McConnon & Co.* (see p. 654, *Gwinn's Compilation Federal Food and Drugs Act Decisions*), Morris, District Judge, in charging the jury said, with reference to the federal food and drugs act, what with equal propriety may be said of the Ohio act:

"The object of the act * * is two-fold. First, to prevent people who have articles to sell from placing in them ingredients that are injurious or deleterious to the health of the people, and causing them to buy without knowing that fact. * * * The second object of the statute is to prevent people from so labeling an article that a man buying it will think that he is buying one thing, when in reality he is buying another."

In the case just cited, the defendant was charged with misbranding for the reason (p. 655) that—

"the product * * purported to be, and was represented to be, an extract of vanillin and coumarin, whereas in truth and in fact it was a compound of said substance with burnt sugar color and prepared in imitation of vanilla without being labeled as an imitation of vanilla extract."

Speaking of this charge, the court said (p. 656):

"As to the misbranding; is that article so branded, first, that it is an imitation of vanilla extract; that people buying it

and looking at the brand, and looking at the article would think that it was vanilla extract?"

Further illustrative of the federal view is the case of Hudson Mfg. Co. vs. United States, 192 Fed., 920. The per curiam says:

"Where there is no proof that the words 'Hudson's Extract' have a well-known trade meaning, an imitation of vanilla marked 'Hudson's Extract,' without giving any indication of what the article is composed, shows a clear case of misbranding under the pure food law."

Some meaning must of course be ascribed to the language found in section 5779 General Code—

"if it is an imitation of, or is sold under the name of another article."

It was quite evidently intended to serve some purpose. What purpose?

Upon reflection, it seems to me that the purpose of the language appears by substituting the word "and" for the word "or", thus causing the phrase to read—

"if it is an imitation of, and is sold under the name of another article."

That it is permissible to make such a substitution, where the sense demands, is, of course, a familiar rule of statutory construction.

Barrow v. Williams, 12 O. N. P. (n.s.) 518; 29 Cyc, 1505; Black on Interpretation of Laws, p. 153.

Such a construction is consistent with the view taken in the case of United States vs. Five Cases of Champagne, 205 Fed. 817, of the analogous section of the federal law heretofore quoted, to wit:

" * * an article shall also be deemed to be misbranded: * * * In the case of food: First. If it be an imitation of or offered for sale under the distinctive name of another article."

The syllabus shows that the facts in the case just cited were these:

"A wholesale liquor dealer in New York ordered four cases of champagne from S. & Co. in Illinois. The order was filled with cases, the outside of which were marked with designs to represent cases of champagne and contained bottles of the same shape and made to imitate an ordinary champagne bottle. The bottles were corked and dressed about the neck

the same and in very close imitation of ordinary champagne bottles, having the same style of label and seal, both attached in the same manner, and on the label was the name 'Special Gold Cabinet, Superior Quality,' with a coat of arms on one side and the initials 'H. H. S. & Co.' and on the other certain figures, but without the word 'champagne.' The contents of the bottles was a very cheap, ordinary, low grade of carbonated white wine. The boxes were also marked with the words 'Extra Dry,' when in fact the contents were not 'Extra dry.'"

The court rendered a judgment of condemnation, saying at p. 819:

"This wine in question was and is an imitation of genuine imported champagne, and was and is so labeled and branded as to deceive and mislead both the purchaser and users into the belief that it is genuine champagne. Is it within the proviso or exception quoted? It contains no added poisonous or deleterious ingredient or ingredients. It was not and is not offered for sale under the distinctive name 'Champagne' as that word is not on either bottle, label, or package, if the statute means, by 'offered for sale under the distinctive name of another article,' that it must be so advertised, or bear on the package containing it the distinctive name of some other article. Even if it has a distinctive name 'Special Gold Cabinet,' still it is 'an imitation of' and was actually 'offered for sale' under the name 'champagne,' which is the distinctive name of another article; that is, 'champagne' was ordered, and the seller sent this article as and for champagne, thus not only offering it for sale as champagne, but selling it as champagne. By his acts he represented it to be champagne. Hence this carbonated wine contained in these bottles and packages is not within the proviso or exception, and must be held to be misbranded and subject to seizure and condemnation."

You are therefore advised that an artificial or imitation flavoring extract is not "adulterated" within the meaning of section 5779 and related sections of the General Code of Ohio, merely because it is an artificial or imitation flavoring extract.

It seems desirable here to emphasize the point that while artificial or imitation flavoring extracts may lawfully be sold in Ohio, they must not contain any ingredients which are poisonous or injurious to health (See Sec. 5779 G. C., sub-sec. 6); furthermore, they must be labeled or branded as "imitation" or "artificial" (See Sec. 5785 G. C., sub-sec. 2).

Further justification for the views above stated might be found in the fact that until quite recently section 5785 G. C. sub-section 4, expressly recognized the lawfulness of artificial or imitation flavor-

ing extracts. In view of the change recently effected in said sub-section by H. B. No. 225 (108 O. L. 460), it is considered preferable to confine the discussion to sub-section 4 of section 5779 G. C.

(2) Your second question is: Whether the formula for flavoring extracts or compound for which no standard exists must be printed upon the label of the bottle, package or other container of same.

In connection with the phrase "flavoring extracts for which no standard exists," section 5780 and 5785 G. C. need to be considered.

Section 5780 G. C. says:

"A flavoring extract is also adulterated within the meaning of this chapter, if, when sold under or by any one of the following names it differs from the standard hereby fixed therefor: (1) Almond extract shall be the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and shall contain not less than one per cent. by volume of oil of bitter almonds."

(Then follows similar standards for some twenty-two other extracts, which need not here be set forth.)

Said section concludes thus:

"All of said flavoring extracts shall be a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant or parts of the plants and shall conform in name to the plant used in its preparation."

Section 5785 G. C., prior to the amendment thereof which will presently be adverted to, read as follows:

"Food, drink, flavoring extracts, confectionery or condiment shall be misbranded within the meaning of this chapter:

1. If the package fails to bear a statement on the label of the quantity or proportion of morphine, opium, cocaine, heroine, alpha or beta cucaine, chloroform, cannabis, indica, chloral hydrate, or acetanilide, or any derivative or preparation of such substances contained therein; 2, if it is labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so; 3, if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; 4, in case of a flavoring extract, for which no standard exists, if it is not labeled 'artificial' or 'imitation' and the formula printed in the manner hereinafter provided for the labeling of 'compounds' or 'mixtures' and their formulae; 5, if the package containing it or a label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; provided, that this section shall

not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percentage, in terms of one hundred per cent of each ingredient therein. The word 'compound' or 'mixture' shall be printed in letters and figures not smaller in height or width than one-half the largest letter upon any label on the package and the formula shall be printed in letters and figures not smaller in height or width than one-fourth the largest upon any label on the package, and such compound or mixture must not contain an ingredient that is poisonous or injurious to health."

It will be noted that sub-section 4 of the above quoted section required two things as to the labeling of flavoring extracts for which no standard exists, namely, that the same be labeled "artificial" or "imitation," and in addition that the label bear the formula of said extracts printed in the manner provided for the labeling of "compounds" or "mixtures."

Some time after the passage of said section 5785 G. C. in the form just set forth, the Department of Agriculture adopted the rule or regulation referred to in your letter, relative to the labeling of flavoring extracts, said rule being known as "Department Ruling Number 3," reading in part as follows:

"1. All extracts that do not conform to the standards laid down in Section 5780 must be labeled as 'compounds' or 'mixtures,' 'artificial' or 'imitation' as the case may be, together with the formula printed in the English language in terms of one hundred per cent and all in proper sized type. This labeling should appear on both the carton and bottle."

The present legislature amended section 5785 G. C. by H. B. 225 (108 O. L. 460), effective August 19, 1919. The only change made was in sub-section 4, which now reads:

"In case of a flavoring extract for which no standard exists there is not printed in English, conspicuously, legibly and clearly on the label the quantity by volume of alcohol in said extract."

It will be noticed that the change in sub-section 4 was one of complete substitution. That is to say, the requirement that a non-standard flavoring extract be labeled "artificial" or "imitation" was dropped out, as was also the requirement relative to printing the formula. In place of these requirements, the legislature substituted another, viz., that there be printed in English, conspicuously, legi-

bly, and clearly on the label "the quantity by volume of alcohol in said extract."

There is now, so far as I am aware, no statute which requires the formula for flavoring extracts for which no standard exists to be printed upon the label of the bottle, package or other container of the same.

The question now arises as to the present status of "Department Ruling Number 3," hereinabove referred to. Has the Secretary of Agriculture the authority at the present time to make and enforce a rule requiring, as does Rule Number 3, that the formula of flavoring extracts be printed in the English language on the carton and bottle in terms of one hundred percent and in proper sized type?

The only authority which the legislature appears to have given the Secretary of Agriculture in the matter of making rules of the character of the one under consideration, is contained in section 1177-12 G. C. That section, so far as pertinent, says:

"The secretary of agriculture shall make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state. Such rules and regulations shall, where applicable, conform to and be the same as the rules and regulations adopted from time to time for the enforcement of the act of congress approved June 30, 1906, and amended March 3, 1913, and known as 'the food and drug act.'"

It is evident that under the provisions just quoted the authority of the secretary of agriculture in the matter of making rules and regulations is a dependent and not an independent authority. That is to say, he is not to make any rule or regulation that to him seems proper, but such and such only as are necessary to enforce subsisting food, drug, dairy or sanitary laws, with the further proviso as to conformity with federal rules and regulations. If there is no law of Ohio of the character stated to which any proposed rule is referable, such rule cannot be adopted.

In answer to your second question, you are advised that under the present laws of Ohio, the secretary of agriculture is without authority to require that the formula for flavoring extracts for which no standard exists be printed upon the label of the bottle, package or other container of same.

It is noted that your letter refers not only to the matter of labeling flavoring extracts for which no standard exists, but likewise to the matter of labeling "compound" for which no standard

exists. Thus far in our discussion no separate consideration has been given to the matter of compounds.

It is assumed that the word "compound" in this connection means a flavoring extract consisting of a union or mixture of two or more extracts or flavors.

Nothing has been found in the statutes which would require a flavoring extract compound for which no standard exists to bear a label showing the formula therefor, merely because it was a compound. The same conclusion may therefore be stated, respecting such compounds, as was stated *supra* relative to the labeling of flavoring extract for which no standard exists.

It may be well, however, at this point to refer to sub-section 5 of section 5785 G. C., which says:

"If the package containing it or a label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; provided, that this section shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percentage, in terms of one hundred per cent of each ingredient therein.

The word 'compound' or 'mixture' shall be printed in letters and figures not smaller in height or width than one-half the largest letter upon any label on the package and the formula shall be printed in letters and figures not smaller in height or width than one-fourth the largest upon any label on the package, and such compound or mixture must not contain any ingredient that is poisonous or injurious to health."

In the case of *The J. M. Sealts Company vs. State of Ohio*, an unreported case in the Court of Appeals of Allen County, decided December 28, 1917, the court, referring to the above quoted language, said:

"The proviso contained in Section 5785 General Code is not a requirement that packages containing mixtures or compounds shall be labeled with the name and percentage in terms of one hundred per cent of each ingredient, as therein specified, but is an exclusion of such packages from the defined offense of misbranding."

The Supreme Court overruled a motion by the state to certify the record in this case.

The decision in the Sealts case, it may be said in passing, op-

poses the view taken by the Attorney General in opinion number 1044 found in 1915 Attorney General Opinions, Volume III, p. 2264.

(3) Your third question is as to the meaning of the words "the quantity by volume of alcohol in said extract"

found in sub-section 4 of section 5785 G. C. (108 O. L. 460). You wish to know whether a statement of alcoholic content in terms of percentage would satisfy the requirement made by the above-quoted language.

The word "volume" is variously defined. According to the Century Dictionary it means:

"an amount or measure of tridimensional space."

Or, as defined by Webster's New International Dictionary, it is "space occupied, as measured by cubic units, i.e., cubic inches, feet, etc."

In the so-called Sherley amendment to the 1906 federal food and drug act, it is required that each package

"bear a statement on the label of the quantity or proportion of any alcohol. * * *"

Regulation 30 of the federal secretary of agriculture says:

"In the case of alcohol the expression 'quantity' or 'proportion' shall mean the average percentage by volume in the finished product."

That the legislature of Ohio was familiar with the idea of expressing quantity in terms of percentage by volume appears from section 5780 G. C., where it required that certain flavoring extracts contain a certain per cent. by volume of the essential oils.

It is therefore not unlikely that the legislature had in mind both the federal provisions above quoted and the provisions of section 5780 G. C. at the time sub-section 4 of section 5785 G. S. was amended. I am therefore of the opinion that a statement of alcoholic content in terms of percentage by volume will satisfy the provision in question.

Township Treasurers, by Virtue of Section 3318 General Code, as Amended 107 O. L. 652, Are Entitled to the Two Per Cent. Fee Therein Named Upon Moneys Paid Out by Them on the Order of the Township Trustees for the Cost and Expense of Road Improvements Under Sections 3298-1 to 3298-15n General Code; but They Are Not Entitled to Fees on Moneys Paid Over in Redemption of Bonds Issued on Account of Such Improvements, or in Reimbursement of Township Funds for Moneys Advanced on Account of the Assessment Share.

The Fees so to be Paid to Township Treasurers are to be Estimated by the County Surveyor When Making up the Estimate of Cost and Expense Mentioned in Section 3298-6 General Code, and They Are to be Included as Part of the Actual Cost of the Improvement as Calculated After the Improvement Work is Complete. Such Actual Cost, with the Item of Treasurer's Fees Included, is to be Used in Making the Division Between Township and Property Owners in Accordance with the Apportionment that has Been Adopted Under Authority of Section 3298-13 General Code.

The Fees so to be Paid are Within the Purview of and Subject to the Respective Limitations of One Hundred and Fifty Dollars and Three Hundred Dollars Mentioned in Said Section 3316.

Opinion No. 934—(Dated January 13, 1920.)

Hon. Carroll A. Stubbs, Prosecuting Attorney, Celina, Ohio.

Dear Sir: The receipt is acknowledged of your request for an opinion upon the following:

"Under Section 3318 General Code as amended in 107 Ohio Laws is the township treasurer entitled to two per cent on money paid into the township treasury from assessments on road improvements under the township law?

1. When such money comes directly into the township treasury from the land owners by reason of assessments being paid in cash?

2. When such money comes into the township treasury from the county auditor who collects assessments certified to him?

If he is entitled to two per cent in either of the above cases is he limited to the one hundred and fifty or three hundred dollar limit of Section 3318 General Code per year?"

In response to request for further information you have stated with reference to the above that your inquiries relate to road improvements under the direction of township trustees as authorized

by sections 3298-1 to 3298-15n General Code; that your first inquiry has special reference to an improvement in connection with which no bonds were issued, "payment being made in cash by the property owners, the township having sufficient funds on hand to pay its share"; and that your second inquiry relates to an improvement whereof one-half the cost was paid by the township and one-half by the property owners, bonds being issued in anticipation of the whole cost of the improvement.

Said section 3318 as amended 107 O. L. 652, reads as follows:

"The treasurer shall be allowed and may retain as his fees for receiving, safe keeping and paying out moneys belonging to the township treasury, two per cent of all moneys paid out by him upon the order of the township trustees, but in no one year shall he be entitled to receive from the township treasury more than one hundred and fifty dollars, except that in a township wherein a city is located and such city is a part of such township, a township treasurer shall be entitled to receive from the township treasury not more than three hundred dollars in one year."

While said statute authorizes the allowance to and retention by the treasurer of compensation for "receiving, safe keeping and paying out moneys belonging to the township treasury" yet said compensation is calculated at the rate of two per cent "of all moneys paid out by him upon the order of the township trustees;" so that no matter what may be the responsibilities and services of the treasurer in receiving and safe keeping the moneys before paying them out, his compensation does not accrue until the moneys are actually paid out.

Again, said statutes known as sections 3298-1 and 3298-15n do not in themselves make reference to any compensation to the township treasurer. Therefore, if the treasurer is entitled to compensation with respect to moneys accruing and paid out in connection with improvements under said series of statutes, the authority for such compensation must be found in section 3318. Furthermore, such authority, if found in said section goes only to "moneys belonging to the township treasury;" hence it becomes evident that if the treasurer is entitled to compensation as to moneys in connection with the improvements in question it must be upon the basis that such moneys are "moneys belonging to the township treasury", and therefore subject to the respective limitations of one hundred and fifty dollars and three hundred dollars named in section 3318.

Having thus determined the authority for and limitations upon the compensation of the treasurer if he is entitled to it in connection with the improvements in question, we now inquire whether he is in fact entitled to such compensation; and for the purposes of that inquiry it is proper to make a short reference to the matter of assessments against affected lands arising out of improvements under sections 3298-1 to 3298-15n.

Your second inquiry, as has been stated, relates to a case where bonds have been issued for the whole cost of the improvement. In such a case, according to a recent holding of this department in an opinion (No. 916, dated January 6, 1920) directed to Hon. Watson H. Gregg, Prosecuting Attorney, Cambridge, Ohio, there is no statutory authority for the payment of the assessments otherwise than in installments, and if paid as a lump sum the tender of payment in lump must include interest on the assessments in full from date of issue to date of maturity of bonds issued by authority of section 3298-15n General Code in anticipation of such assessments, rate of interest to be the same as that named in the bonds.

Your first inquiry, on the other hand, deals with a case where no bonds have been issued. From a legal standpoint the same rule would apply to the making of assessments in such a case as applies where bonds are issued,—that is to say, the assessment is to be made on the basis of actual cost after such cost has been ascertained upon completion of the improvement. Thereupon, the purpose of the making of the assessment will be to reimburse the township for the money it has advanced directly out of its tax funds on account of the "property owners' share." The information furnished in connection with your first inquiry is open to the interpretation that the assessment may have been made on an estimated basis and all assessments paid by the property owners direct to the township treasurer before the work was done. Such a course, if followed, was without the sanction of direct statutory authority; and the corrective action which suggests itself is the making of an adjusted assessment upon the basis of actual cost. In the latter case, of course, the matter of treasurer's compensation may be taken into account upon the principles pointed out herein.

Further discussion of your question will therefore be with the understanding that whether bonds have been issued or not, the assessment is to be made after the work is completed, and payment thereof made by the owners of affected lands to the county treas-

urer in accordance with the provisions of section 3298-15b.

Section 3318 is very general in character and no reason is perceived for construing it otherwise than as embracing compensation on all moneys belonging to the township treasury which are paid out by the treasurer upon the order of the township trustees. In this view, the treasurer is entitled to compensation for moneys paid out in connection with improvements under said sections 3298-1, et seq.,—a statement which is made, however, as excluding payments either to the holders of bonds issued in connection with the improvement or to the township by way of reimbursement for moneys advanced out of its treasury on account of the assessment share of the improvement. As is hereinafter pointed out, there is no warrant for compensation to the treasurer on account of the latter class of payments.

If we are to find a source out of which the compensation of the treasurer is to be paid, we must find it in the fund which is created for the doing of the improvement, because the language of section 3318 is that the treasurer "shall be allowed and may retain as his fees," etc. and this proposition means that so far as the assessment or property owners' share is concerned, we must find that section 3318 is broad enough to permit of the including in the property owners' share the two per cent compensation for the treasurer.

In view of the general character already noted of section 3318, and the fact that it makes no exceptions based on the source of the funds, it must be held to contain authority for including in the assessments in question the compensation of the township treasurer. Certainly the fund for an improvement under sections 3298-1 to 3298-15n, including the part in anticipation of assessments, must, when it is in the township treasury, be considered legally as "money belonging to the township treasury", for the whole expense is to be paid in the first instance out of the township treasury. In this latter connection, there is found in section 3298-15h the statement that "the township clerk shall not draw his warrant on the township treasury in favor of any contractor for any estimates on account of any contract let under the provisions of the preceding sections" until certain affidavits are filed. Again, in section 3298-15-1, relating to payment of estimates to contractor, the statements appear:

"The trustees may pay such estimates as may be furnished from time to time by the county surveyor, and no payments shall be made except with the approval of such sur-

veyor. The trustees shall inspect the work when completed and make final payment therefor, with the approval of the county surveyor."

It thus appearing that section 3318 contains authority for including the treasurer's compensation as part of the cost of the improvement, the question remains as to how such inclusion may be made as a practical proposition. Authority to issue bonds in connection with improvements now in question is conferred by section 3298-15e, whereof the first sentence reads as follows:

"The township trustees, in anticipation of the collection of such taxes and assessments, or any part thereof, may, whenever in their judgment it be deemed necessary, sell the bonds of said township in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement."

In view of the fact, as already stated, that the assessment is not to be made until the work is finished, of course, bonds may be issued before the work is started, and said bonds, as has just been seen, may be sold in any amount not greater than the aggregate sum necessary "to pay the estimated compensation, damages, costs and expenses of such improvement." Hence, whether on the one hand the fund for the doing of the work is to be furnished in whole or in part by an issue of bonds, or on the other hand, by township funds accruing directly from taxation, the item of treasurer's compensation may be included in the surveyor's estimates of the cost of the work. Then when the work is finished, the actual extent of the item "treasurer's compensation" will have become known, and the actual compensation so paid the treasurer will be definitely included in the total cost of the work, which total actual cost is the basis of division between township and property owners as mentioned in section 3298-13. In short, the item of treasurer's compensation will go through the same course as an item of expense of the improvement as will other items of the cost thereof.

The views above expressed are not inconsistent with the conclusion expressed in an opinion of this department of date November 20, 1917, found in Opinions of Attorney General for 1917, Vol. III, p. 2147, as follows:

"The fees provided for collections by the county auditor, under section 2624, General Code, and for the county treasurer, under section 2685 General Code, cannot be included in the cost of a special assessment for a public improvement, to be levied against abutting property owners."

That opinion had special reference to fees of county auditor and county treasurer in connection with street improvement assessments. It makes mention of a number of judicial decisions bearing on the subject. The conclusion reached seems to be based largely on the fact that it is impractical to determine in advance the cost of collecting a special assessment, and that therefore the case of *Spangler vs. Cleveland*, 35 O. S. 469, would apply. In the matter now being considered, the amount of treasurer's fees is susceptible of actual determination, and therefore, is not open to the objection underlying said opinion, and underlying the case of *Spangler vs. Cleveland*. In short, as has been pointed out, the item of treasurer's fees in connection with township road improvements is one which may be arrived at as accurately as any other item of expense, and will go into the sum total of actual cost as determined upon the completion of the work and the payment of all bills in respect thereto.

It has been stated that the treasurer is not to collect compensation for his payments on account of redemption of bonds or on account of reimbursement of the township treasury for moneys advanced on account of the assessment share. The reason for such statement is plain. It has been seen that fees accrue to the treasurer upon his paying, by order of the trustees, current items of expense of the improvement,—such, for instance, as estimates to the contractor. The fund for paying such items is in the township treasury, either as the result of the sale of bonds or of the accrual of tax levies. Therefore, in paying over money by way of redeeming the bonds, or in reimbursing the proper fund of the township treasury for moneys advanced out of it on account of property owners' share, the treasurer is not in any true legal sense paying out moneys on the order of the township trustees,—he is merely turning over to their owners funds which may be described as trust funds. No discretion rests either in the township trustees or the treasurer in the matter of turning over the funds, though of course they are under the duty of seeing that they are turned over to the person or fund entitled to them. The moneys which are so being repaid furnished in the first instance the very fund out of which treasurer's compensation has once accrued, and again, so far as assessment collections are concerned, they embrace a proportionate share of such compensation; so that to hold that the treasurer is entitled to compensation a second time would yield not only

the illogical result of double fees, but also of fees on fees already paid him.

It may be urged that the respective limitations of one hundred and fifty dollars and three hundred dollars named in section 3318, when applied in the light of the views herein expressed, will have the practical result that one improvement may be charged with the item of treasurer's compensation and another improvement may not be so charged. To illustrate: If an improvement is begun on April first and completed on July first at a cost of \$7500.00, the treasurer's compensation will be one hundred and fifty dollars, which in most instances will be the maximum that he may receive for the year. This will leave no basis for a charge of the item of treasurer's compensation against an improvement begun on August first and completed December first. All that need be said of this somewhat peculiar result is that it furnishes no reason for overthrowing the positive provisions of section 3318. In the supposed case, the terms of section 3318 would simply so operate that while the item of treasurer's compensation may have been estimated in the cost of the improvement begun on August first, it would develop on calculation of actual cost not to be an expense item. The case supposed is an extreme one and not likely to arise often in practice, inasmuch as in a given working season the township, if it undertakes more than one improvement, will likely carry along contemporaneously the work of the several improvements, in which case the comparatively small item of treasurer's fees will adjust itself automatically on an equitable basis as among the several improvements.

As a matter of caution, it should be stated that what is said in this opinion has reference only to township road improvements as distinguished from the township road district improvements provided for by sections 3298-25 to 3298-53.

The foregoing considerations probably result in a negative answer to your questions in the precise form in which they are stated; but the general rules for your guidance to be deduced from what has been said, are as follows:

(1) Township treasurers, by virtue of section 3318 General Code, as amended 107 O. L. 652, are entitled to the two per cent. fee therein named upon moneys paid out by them on the order of the township trustees for the cost and expense of road improvements under section 3298-1 to 3298-15n, General Code; but they are not entitled to fees on moneys paid over in redemption of bonds issued on account of such improvements, or in reimbursement of

township funds for moneys advanced on account of the assessment share.

(2) The fees so to be paid to township treasurers are to be estimated by the county surveyor when making up the estimate of cost and expense mentioned in section 3298-6 General Code, and they are to be included as part of the actual cost of the improvement as calculated after the improvement work is complete. Such actual cost, with the item of treasurer's fees included, is to be used in making the division between township and property owners in accordance with the apportionment that has been adopted under authority of section 3298-13 General Code.

(3) The fees so to be paid are within the purview of and subject to the respective limitations of one hundred and fifty dollars and three hundred dollars mentioned in said section 3318.

SUPREME COURT

MOTION DOCKET.

10283—The Board of County Commissioners of Paulding County vs. P. B. Putman. Motion for an order directing the Court of Appeals of Paulding County to certify its record. Sustained.

10362—Clinton Cowen, State Highway Commissioner, et al. vs. State of Ohio ex rel. D. D. Donovan, a taxpayer. Motion for an order directing the Court of Appeals of Henry County to certify its record. Overruled.

10370—George H. Phelps, on behalf of the City of Findlay, vs. The Toledo, Bowling Green & Southern Traction Co. Motion for an order directing the Court of Appeals of Hancock County to certify its record. Overruled.

GENERAL DOCKET.

16224—The Fred R. Jones Co. vs. Charles Fath et al. Cuyahoga. Judgment reversed, cause remanded.

16255—James McClelland. Guardian, vs. State ex rel. George W. Clark. Tuscarawas. Judgment affirmed.

16273—Ph. Morton vs. The Morgan, Murray & Potts Co. Hamilton. Judgment affirmed.

16317—Oscar W. Kuhn, Trustee, vs. The Southern Ohio Loan & Trust Co. Hamilton. Judgment affirmed.

16329—The East Liverpool City Ice Co. vs. Elizabeth Mattern. Columbiana. Judgment affirmed.

16380—Albert H. Nicholls vs. The City of Cleveland. Cuyahoga. Judgment affirmed.

16432—The State of Ohio ex rel. Samuel Doerfler, Prosecuting Attorney, vs. John G. Price, Attorney General. Quo warranto. Writ denied.

SECRETARY OF STATE

NEW CORPORATIONS

Provident Estates Co., Akron, \$10,-625. T. H. Dillon, D. W. Maxon, E. J. Larson, R. I. Moore, M. M. Hagle.

Westminster Building Co., Akron, \$120,000. Edmund Burroughs, Chas. Herberich, S. C. Dietz, G. F. Burkhardt, Walter Herberich.

Ohio Transfer Co., Cleveland, \$10,000. Peter B. Mitchell, Walter J. Killius, R. H. Senkbeil, Fred J. Perkins, S. E. Senkbeil.

Old Honesty Oil Co., Cincinnati, \$100,000. F. C. Williams, A. Helm, C. H. Kiechler, W. Davidorf, R. Saylor Wright.

McLaughlin & English Co., Canton, \$10,000. Charles W. McLaughlin, D. M. Carman, Thurman C. Smith, Wm. P. English, Loren E. Souers.

Murphy Aircraft Co., Canton, \$5,000. Maurice Murphy, C. E. Knight, J. W. James, Brooke Martin, Charles M. Bell.

West Side Exporting Co., Cleveland, \$2,500. Michael A. Piclano, Geo. Costello, Herman Lepone, Nick Dobreska, Klie Z. Barson.

Rath Foundry and Machine Co., Sebring, \$50,000. Charles J. Rath, Charles M. Wilson, Samuel L. Eardley, E. B. Fritchman, Sumner Gesch.

International Collieries Co., Cleveland, \$10,000. Robert E. Rochm, Geo. H. Roudebush, Horatio Ford, K. C. Junke, N. I. Young.

No-Dix Chemical Co., Columbus, \$25,000. Victor Benedix, Chas. Weger, Peter Schaefer, Frank Wiederhold, Emil Wiederhold.

Geo. W. Newman Leather Co., Cincinnati, \$7,500. Geor. W. Newman, Arthur S. Patton, Alfred Bettman, Edw. P. Moulinier, Graham P. Hunt.

Echo Coal Co., Columbus, \$10,000. S. Cottingham, Fred Essex, O. E. Harrison, T. J. Frasure, H. C. Allread.

Thompson Realty Investment Co., Columbus, \$100,000. King G. Thompson, Ben S. Thompson, Louis P. Albright, Herbert S. Warwick, Frank A. Swawaker.

Erie Candy Co., Sandusky, \$25,000. Edw. W. Rhode, M. Allen Clemons, Walter A. Mursqhal, Bruno E. Kunzman, Ada A. Rhode.

Geo. C. Miller Sons Co., Cincinnati, \$100,000. Frank H. Miller, Ben C. Blowney, R. A. LeBlond, C. B. Terry, Orville K. Jones.

Rocky Ridge Mercantile Co., Rocky Ridge, \$50,000. John A. Carstens, H. J. Foremen, Herman Brecklin, John Parmen, A. W. Hablitzel.

T. M. Snyder Co., Cincinnati, \$50,000. Chas. E. Dornette, Geo. A. Dornette, Carl W. Frey, Grace Reinzan, John G. Robinson, Jr.

Ohio Valley Tire & Rubber Co., Cincinnati, \$50,000. Arthur Stollmaier, John M. Ferguson, R. C. Smith, J. Sagmiester, M. B. McHugh.

B. L. Eaton Co., Akron, \$250,000. B. L. Eaton, W. B. Ruggles, F. A. Schmitter, W. C. Workman, V. M. Varley.

M. & N. Auto Cleaning Service Co., Cleveland, \$25,000. P. C. Mooney, James T. Cassidy, E. J. Nerbeler, J. M. Mooney, P. J. Mooney.

Buckeye Production Co., Toledo, \$10,000. Sigmund Sanger, Geo. P. Hahn, M. Siglow, Albert J. Kranz, T. Hooster.

Cincinnati Monitor Oil Co., Cincinnati, \$100,000. R. Pope, Robert Black M. A. Watts, R. Bollinger, Wm. H. Burtner, Jr.

Newman Dress & Skirt Co., Cleveland, \$125,000. Isaac Newman, Bertha B. Newman, Esther N. Wile, Jacob E. Newman, Leo. Wile.

King Bee Milling Co., Alliance, \$50,000. J. C. Henchen, G. A. Myers, A. R. Tanner, R. H. Baysinger, Esther M. Myers.

Metropolitan Commercial Co., Cleveland, \$500,000. T. A. Williams, Frank J. Welsh, Wm. H. Cool, W. F. Hart, Franklin Hawk.

Corporation Underwriters Co., Cleveland, \$250,000. Geo. R. McKay, M. C. Teasdale, R. K. Pelton, W. A. Congalton, James A. Cosgriff.

United Stamping & Machine Co., Cleveland, \$267,500. D. R. Kilkin, J. N. Schultz, Quay H. Findley, J. M. McDonough, L. Collins.

Geo. Freese's Sons Co., Fostoria, \$150,000. J. F. Freese, Emma Freese, Blanche Freese, H. L. Zemer, Bernice Zemer.

American Trucking Co., Columbus, \$10,000. Harry C. Stouffer, W. W. Walsh, W. A. Wolfe, M. D. Stouffer, E. J. Stouffer.

Hand Rubber Co., Cleveland, \$1,000,000. W. F. Rand, Frederick P. Waltner, W. A. Grigsby, Chas. A. Hyde, Marguerite E. Tample.

Lubrophite Oil Products Co., Cincinnati, \$50,000. John C. Shepard, E. P. Zackman, H. L. Crowley, G. A. Thompson, H. M. Rulison.

Low Voltage Brush Co., Cincinnati, \$10,000. Morris McCright, Harrie Espy, Lester L. Beamer, Emma Beamers, Henry Kamps.

American Delivery Co., Columbus, \$10,000. Katheryn S. Pearce, Wm. C. Gleish, Mrs. W. G. Gleish, Jerry Hearley, Edw. A. Hearly.

Capron Motor Sales Co., Toledo, \$10,000. Harry D. Capron, Frank J. Connolly, Lionel Levy, Elizabeth Ryan Wm. B. Devlin.

Cardinal Phonograph Co., Newark, \$10,000. M. M. Richter, C. W. Kellenberger, W. W. Connell, C. R. Brewer, Oscar Van Tessell.

Cuyahoga Baking Co., Akron, \$75,000. Walter Nivine, Harvey Musser, J. R. Huffman, L. M. Russell, E. L. Brooks.

E. H. Walker Co., Toledo, \$100,000. Edwin H. Walker, F. T. Walker, F. K. Denny, Sholto M. Douglas, Charles Hartman.

Canton Overall Mfg. Co., Canton, \$50,000. George David, Andrew Peretzky, Austin Paumier, Donald D. Baird, T. J. Thomas.

La Queen Co., Cleveland, \$5,000. S. A. Thorman, A. H. Goldman, M. E. Blum, A. L. Dietz, A. Krejci.

Mayer Plumbing Co., Dayton, \$10,000. Edw. G. Stautzenbach, Fred D. Meyer, Sophia M. Meyer, Marie S. A. Meyer, Rose T. Stautzenbach.

E. W. K'Burg Sales Co., Toledo, \$25,000. E. W. K'Burg, Rob V. Phillips, R. T. Garrison, M. S. Damon, L. W. Hunt.

Swihart Motor Car Co., Canton, \$50,000. George M. Letherman, H. W. Shriver, David G. Swihart, M. Clark, Earl Smith.

Willard Gas Coal Co., Canton, \$150,000. George A. Williams, C. A. McDonald, Celsus Pomerene, Thomas M. Miller, Ralph S. Ambler.

The Goldman Pen Co., Cleveland, \$10,000. P. T. Gaynor, M. Faut, Frank C. Healy, B. Whitmer, Jacob Goldman.

McWade Tire & Rubber Co., Garrettsville, \$500,000. J. H. McWade, C. C. Cox, W. E. Snyder, Helen L. Gault, O. C. Bentz.

The Gunsett Co., Van Wert, \$60,000. D. J. Gunsett, F. W. Gunsett, J. H. Gunsett, Karl F. Gunsett, J. A. Gunsett.

The Ohio Stock Food Co., Akron, \$110,000. N. O. Mather, H. P. Moran, J. H. Miles, James P. Loomis, Charles H. Lahr.

The Aetna Rubber Co., Cleveland, \$335,000. George R. McKay, M. C. Teasdale, R. p. Pelton, W. A. Congalton, James Cosgriff.

The Eaton-Handy-Harpham Co., Akron, \$5000. H. M. Eaton, E. O. Handy, Elihu Harpham, C. Blake McDowell, A. H. Commias.

The Brunn-McClure Co., Columbus, \$30,000. J. A. McClure, Jr., Lorena C. McClure, Dick B. Bruun, Lucile E. Brunn, P. H. Horst.

The Tuber Charles Co., Cleveland, \$5000. Charles Isaacs, Henry Tuber, Philip Tuber, J. H. Morris, Agnes Fleischer.

The Six-Records-In-One Ohonograph Co., Cincinnati, \$50,000. C. M. Carter, J. B. Towler, Loen Goldberg, O. M. Outcalt, G. Shoemaker, D. S. Buchanan, Jr., G. L. Schultz.

The Barlitt Oil & Gas Co., Cleveland, \$25,000. E. L. Barlitt, Roscoe Carle, C. D. Pifer, S. M. Myers, H. J. Jeffrey.

The Perfection Oil & Grease Co., Cleveland, \$25,000. R. E. Heimberger, A. Goldberg, E. Kopp, M. Garber, C. D. Reid.

The Hocking Valley Drilling Co., Nelsonville, \$25,000. C. G. Dew, E. L. O'Mara, Jr., B. J. Jaggi, R. W. McCummon, W. M. Adair.

The Guarantee Vulcanizing and Sales Co., Cincinnati, \$35,000. G. R. Batcheller, Jr., F. J. Brozterman, F. W. Hawking, Geo. J. Schhhichte, Mildred E. Batcheller.

The A. E. Mardorf Co., Cincinnati, \$50,000. A. E. Mardorf, A. C. R. Jones, Lee A. Knapp, W. C. Mardorf, C. J. Aull.

The Sherman-Homes Co., Cleveland, \$10,000. William Sherman, F. P. Gaffney, F. W. Schwentner, J. M. Hauck, William J. Shaver.

The Fostoria Sales & Contracting Co., Findlay, \$10,000. R. T. Garrison, R. V. Phillips, E. S. Oamon, L. W. Hunt, J. L. Epler.

The Cleveland Seed & Supply Co., Cleveland; \$25,000. R. Walton, J. J. Moore, M. B. Glore, George E. Sheckler, R. A. Brewer.

The Slimer Commission Co., Cincinnati; \$25,000. J. T. Bennington, J. Seiber, Jr., Ernst Schultz, H. E. Fisher, Albert H. Morrill.

The Economy Drug Co., Cleveland; \$10,000. S. A. Thomas, A. H. Goldman, Charles E. Robinson, A. L. Dietz.

Economy-Stockbridge Co., Cleveland; \$100,000. F. K. Gatch, E. S. Wertz, C. Trinter, E. Ary, C. G. Stone.

The Gem Ruber Novelties Co., Cleveland; \$25,000. Fred A. Sherer, Jr., Rees H. Davis, Fred J. Young, M. Sainsbury, Glenn G. Miller.

The Corporation & Directors Directory Co., Cleveland; \$25,000. D. T. May, Perry D. Caldwell, J. R. Robinson, D. L. Schwab, T. M. Lavelle.

The Newton Cement Products Co., Newton Falls; \$10,000. C. D. Wheeler, Earle H. Bates, C. L. Leavell, Mrs. E. H. Bates, Mrs. Johanna Leavell, Mrs. A. Wheeler.

The E. G. Atkins Co., Mansfield; \$2,000. George C. Albrecht, H. T. Siegenthaler, W. P. Sheets, William Berne, E. G. Atkins.

The National Livestock & Feeding Co., Columbus; \$50,000. A. C. Burchfield, S. R. Burkhead, Harvey Burkhead, Ella Burkhead, M. C. Ingle.

The L. C. Tyler Co., Columbus; \$25,000. George R. Hedges, W. S. Holcomb, George S. Long, Stewart A. Hoover, L. C. Tyler.

The William E. McHugh Co., Cleveland; \$50,000. C. L. Locher, W. E. Loesch, Louis Petrash, Catherine Carroll, Frank Lausch.

The Acker-Ludwig Co., Cleveland; \$5,000. D. B. Acker, J. S. Ludwig, F. W. Ludwig, Fred C. Acker, G. E. Galoway.

The John Magilavy Co., Akron; \$10,000. J. Magilavy, L. G. Federman, Jr., R. Herstein, N. F. Tallon, S. Friedman.

The Bergholz Milling Co., Bergholz; \$30,000. W. S. Kirkpatrick, M. Geisinger, W. F. Kane, J. Y. Walker, M. Lieberman.

Increases.

The Western Bank & Trust Co., Cincinnati; \$500,000 to \$1,000,000.

The Wherling Township Coal Mining Co., Akron. \$150,000 to \$1,500,000.

The Eisele-Will Drug Co., Cleveland, \$24,000 to \$100,000.

The T. W. Miller Contracting Co., Youngstown, \$25,000 to \$50,000.

The Jacobson Supply Co., Cleveland, \$10,000 to \$50,000.

The Estate Store Co., Hamilton, \$825,000 to \$1,000,000.

The Deshler Farmers' Elevator Co., Deshler, \$75,000 to \$200,000.

The Shawtown Grain Co., Shawtown, \$10,000 to \$20,000.

The Buckeye State Building & Loan Co., Columbus, \$10,000,000 to \$25,000,000.

The H. H. Blagg Co., Dayton, \$30,000 to \$50,000.

The Bryan Screw Machine Products Co., Bryan, \$100,000 to \$150,000.

The Helen Metal Products Co., Cleveland, \$50,000 to \$150,000.

The Licking Real Estate Co., Newark, \$20,000 to \$50,000.

The Accurate Measure Oil Co., Gahanna, \$25,000 to \$30,000.

The Buckeye Casting Co., Lima, \$10,000 to \$25,000.

The Bryan Farmers' Co-operative Grain & Supply Co., Bryan, \$25,000 to \$50,000.

The New Steelton Lumber Co., Columbus, \$60,000 to \$100,000.

The Pioneer Rubber Co., Willard, \$500,000 to \$625,000.

The South Side Lumber Co., Columbus, \$50,000 to \$100,000.

The Harlow Park Co., Cleveland, \$10,000 to \$335,000.

The Peerless Mortgage Co., Cleveland, \$100,000 to \$300,000.

The Anchor Cartage Co., Cleveland, \$30,000 to \$75,000.

The Minerva Savings & Trust Co., Minerva, \$75,000 to \$100,000.

The Cincinnati Steel Castings Co., Cincinnati, \$50,000 to \$100,000.

The Youngstown Steel Car Co., Youngstown, \$4,000,000 to \$1,750,000.

The Berea Lumber & Coal Co., Berea, \$50,000 to \$100,000.

The Citizens Savings Bank & Trust Co., Hamilton, \$100,000 to \$200,000.

The Fletcher Cartage and Storage Co., Sandusky, \$15,000 to \$25,000.

The Bell Washer & Wringer Co., Cleveland, \$37,500 to \$50,000.

The Clifton Park Lumber Co., Lakewood, \$50,000 to \$75,000.

Decrease.

The Dayton Wright Airplane Co., Dayton, \$1,000,000 to \$500.

PUBLIC UTILITIES COMMISSION

No. 1847—In the Matter of the Application of The Mahoning Valley Water Company for Consent and Authority to Issue and Dispose of \$100,000.00 Eight Per Cent. Preferred Capital Stock. Prayer Granted.

(Dated January 29, 1920.)

This day this matter came on for final consideration upon the application of The Mahoning Valley Water Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue one hundred thousand dollars, par value, of eight per cent preferred capital stock, the proceeds arising from the sale thereof to be used to reimburse its treasury, in part, for the moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the provision of additions, extensions and improvements to its facilities:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That to the first day of January, 1920, and within the five years next preceding the date of the filing of the application in proceeding No. 1608, in substitution for which this proceeding has been inaugurated, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$144,086.54, none of which was procured from or obtained by the issue of stock, bonds, notes or other evidences of indebtedness, and

(2) That the issue of applicant's said capital stock is reasonably required and the money to be procured thereby necessary for the partial reimbursement of its treasury for the aforesaid uncanceled capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Mahoning Valley Water Company be, and hereby it is authorized to issue its eight per cent, preferred capital stock of the par value of one hundred thousand dollars (\$100,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to-wit: The partial reimbursement, to the extent of such proceeds, of applicant's treasury for the sum of \$144,026.54 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction, completion, extension and improvement of its facilities to the first day of January, 1920, as aforesaid. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1888—In the Matter of the Joint Application of Noah B. Yingling to Sell and The Ohio Gas & Electric Company to Purchase the Electric Light Company at Seven Mile, Butler County, Ohio. Prayer Granted.

(Dated February 2, 1920.)

This day this matter came on for final consideration upon the joint application of Noah B. Yingling, the owner and operator, under the trade name of the Seven Mile Electric Plant, of the electric lighting company operating in and about the village of Seven Mile, Butler county, Ohio, and The Ohio Gas & Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and approval, by this commission, of the sale, by the said Noah B. Yingling, and the purchase by said The Ohio Gas & Electric Company, of the generating station and distributing system composing said Seven Mile Electric Plant:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds

from the pleadings and exhibits filed herein, its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the public will be furnished adequate service for a reasonable and just rate or charge therefor, and is satisfied that its consent and authority for such purchase and sale of said public utility property should be granted. It is, therefore,

Ordered, That the said Noah B. Yingling, be and hereby he is authorized to sell and convey to The Ohio Gas & Electric Company, the property, consisting, generally of a small electric generating station and electrical distributing system in the village of Seven Mile, Butler county, Ohio, of the Seven Mile Electric Plant; and said The Ohio Gas & Electric Company hereby is authorized to purchase and acquire said property and to pay therefor the agreed consideration of one thousand, five hundred dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property, It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceeding involving said matters.

✽

No. 1848—The City Railway Company and The Ohio Electric Railway Company, Complainants, vs. Walker D. Hines, Director General of Railroads, The Baltimore & Ohio Railroad Company and The Home Avenue Railroad Company, Defendants.

(Dated February 3, 1920.)

This matter was submitted upon the pleadings and the evidence.

Upon consideration whereof, and being fully advised in the premises, the commission finds that no passenger or freight trains are operated, at this time, on the tracks of the defendants which intersect the tracks of complainant, The City Railway Company in the city of Dayton, Ohio, (a) on West Third Street, between Western Avenue and Grovesnor Avenue, and (b) on Western Avenue at the intersection of First Street, the first of which crossings is also

used by the cars of The Ohio Electric Railway Company, and is satisfied, in view of the frequency of complainants' operations and the infrequency of the steam railroad switching operations over said crossings, and the view of defendants' tracks by motormen operating the cars of the complainants approaching said crossing, that the complainants should be relieved of the duty of sending an employe ahead of their cars, after the same are brought to a full stop approaching either of said crossings, to see that the way is clear and free from danger for the passage of such cars and to signal the same to proceed over said crossing, and that, to insure the safety and security of the public, no engine or cut of cars shall be operated over said crossings by the defendants until and as the same shall have been brought to a full stop, upon approaching the tracks of complainant, The City Railway Company, and signalled to proceed by an employe of the defendants who has preceded such train or engine upon said crossing to warn the motormen of complainants' cars of the imminence of danger. It is, therefore,

Ordered, That said The City Railway Company and said The Ohio Electric Railway Company be, and hereby they, each, are relieved of the duty of sending an employe ahead to see that the way is clear and free from danger and signalling the cars to proceed, after their respective cars have been brought to a full stop approaching the intersections of the tracks of said The City Railway Company with the tracks of The Home Avenue Railroad Company, leased in perpetuity to The Baltimore & Ohio Railroad Company, and now operated by Walker D. Hines as director general of railroads, on West Third Street, between Western Avenue and Grovesnor Avenue, and on Western Avenue at the intersection with First Street in the city of Dayton, Ohio, It is further

Ordered, That before any engine or cut of cars of the defendants shall be operated across the tracks of complainant upon either of said switch tracks, such engine or cut of cars shall be brought to a full stop approaching said crossing and shall not proceed across the track of the complainant until signalled so to do by an employe of the defendants who has taken position upon said crossing to warn the motormen in charge of complainants' cars of the imminence of danger. It is further

Ordered, That complainant, The City Railway Company, be, and hereby it is notified, directed and required to erect and maintain at each of said crossings a legible sign bearing the legend:

**"ELECTRIC CARS NOT REQUIRED TO FLAG—STEAM
RAILROAD SHALL STOP AND FLAG."**

and that the authority herein granted may be exercised from and after the installation of such signs. It is further

Ordered, That the authority hereinbefore granted shall be and remain in force and effect only so long as the conditions now existing at said crossing and the present method of operation upon said tracks of The Home Avenue Railroad Company (operated as aforesaid) shall continue, or until this order is modified by this commission, and any change in the conditions at said crossing or in the method of operation upon the tracks of said The Home Avenue Railroad Company shall forthwith be reported by the parties to this commission.

✽

No. 1843—In the Matter of the Petition of The Ironton Electric Company for Leave to Issue Bonds to the Amount of \$80,000.00 and Stock to the Amount of \$32,000.00. Prayer Granted.

(Dated January 28, 1920.)

This day this matter came on for final consideration upon the application of The Ironton Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue common capital stock of the par value of \$32,000.00 and first mortgage, six per cent gold bonds, due December 1st, 1944, of the principal sum of \$80,000.00, the proceeds arising from the sale thereof to be used to discharge the applicant's indebtedness, as of July 31st, 1919, of \$84,857.35 incurred and created for and on account of the provision of additions, extensions and improvements to its facilities, and to reimburse its treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom to July 31st, 1919, and within the five years next preceding the date of the filing of the application herein, for the provision of other additions, extensions and improvements to its facilities:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon:

(1) That, as of July 31st, 1919, the applicant was in-

debted for and on account of the provision of additions, extensions and improvements to its facilities in the sum of \$84,857.85;

(2) That, to the thirty-first day of July, 1919, and within the five years next preceding the date of the filing of the application herein, the applicant had actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$6270.35, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

(3) That the issue of applicant's said capital stock of the par value of \$29,500.00 and its said first mortgage bonds of the principal sum of \$77,000.00 is reasonably required and the money to be procured thereby necessary for the payment and discharge of the aforesaid indebtedness and the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of applicant's said capital stock of the par value of \$29,500.00 and its said bonds of the principal sum of \$77,000.00 should be granted. It is, therefore,

Ordered, That said The Ironton Electric Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-nine thousand, five hundred dollars (\$29,500.00), and its first mortgage, six per cent gold bonds, due December 1st, 1944, of the principal sum of seventy-seven thousand dollars (\$77,000.00), and that said capital stock and bonds be sold for the highest price obtainable but not less than the par value of said capital stock nor less than eighty (80) percentum of the par value of said bonds. It is further

Ordered, That any discount arising from the sale of said bonds be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock and bonds be devoted to and used for the following purposes, and no others, to-wit:

(a) The payment and discharge of applicant's indebtedness, as of July 31st, 1919, of the sum of \$84,857.65 incurred and created for and on account of the provision of additions, extensions and improvements to its facilities.

(b) The reimbursement of applicant's treasury for the sum of \$6270.35, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom for the construction, completion, extension and improvement of its facilities, to the thirty-first day of July, 1919, and within

the five years next preceeding the date of the filing of the application herein.

It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority to issue capital stock of the further par value of \$2500.00 and bonds of the additional principal sum of \$3,000, be, and hereby it is denied.

No. 1790—In the Matter of the Application of The Buckeye Light & Power Company for Consent and Authority to Issue \$12,500.00 Common Capital Stock. Modification of Order.

(Dated January 29, 1920.)

The commission having, upon the twenty-second day of December, 1919, herein found that, within the five years next preceding the date of the filing of the application herein and to the first day of September, 1919, the applicant actually expended from its treasury for the acquisition of property and the construction, completion, extension and improvement of its facilities, the sum of \$12,635.23, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and thereupon authorized said The Buckeye Light & Power Company to issue and dispose of its common capital stock of the par value of \$12,500.00, subject, however, to a deferrment of the authority to so issue, of said capital stock, capital stock of the par value of \$3,300.00 until such time as said company shall have repaid to its customers the sum of \$3,298.00 advanced by them toward the payment of the cost of constructing their service lines, this day said matter came on for further consideration upon the application of said The Buckeye Light & Power Company for such modification and amendment of said order as will now permit it to issue and dispose of all of said \$12,500.00, par value of its common capital stock to secure funds with which to reimburse its treasury for an equal amount of the aforesaid uncapitalized capital expenditures therefrom, deferring the capitalization of its repayment of said advances to its customers to some future application.

Upon consideration whereof, and being fully advised in the premises, and having hereinbefore in this proceeding made its findings as to the expenditures by applicant of moneys not secured by the issue of stock, bonds, notes or other evidences of indebtedness, for capital purposes, and the necessity for the issue and disposition of applicant's said capital stock, the commission is satisfied that its former order, made and entered herein should be modified and amended as petitioned for. It is, therefore

Ordered, That the order made and entered herein as of date, December 22d, 1919, be and hereby it is modified and amended to read as follows, to-wit:

Ordered, That said The Buckeye Light & Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twelve thousand, five hundred dollars (\$12,500.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The reimbursement, to the extent of said proceeds, of applicant's treasury for the aforesaid sum of \$12,635.23, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, for capital purposes, to September 1st, 1919. It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order, and of the progress of the reimbursement of its customers for their advances of the aforesaid \$3298.00, together with any other sums which may have been similarly advanced by other customers subsequent to August 31st, 1919.

ATTORNEY GENERAL

The Road Improvement Assessments Mentioned in Sections 6922 and 1214 General Code, May be Paid in Installments Only and Not as a Lump Sum, Unless the Tender of Payment in Lump Includes Interest on the Assessments in Full From Date of Issue to Date of Maturity of Bonds Issued in Anticipation of Such Assessments, Rate of Interest to be the Same as That Named in the Bonds.—The Assessment Referred to in Section 1214 General Code, is not to be Made Before Bonds are Issued Under Section 1223 General Code, but is to be Made Upon Completion of the Work and Apportionment of the Cost by the State Highway Commissioner as Directed by Section 1211 General Code.

No. 886—(Opinion Dated December 24, 1919)

Hon. Benton G. Hay, Prosecuting Attorney, Wooster, Ohio.

Dear Sir: Receipt is acknowledged of your communication submitting for opinion two inquiries, the first of which is as follows:

“What, if any, provision, is there for the payment of cash by the property owner whose lands are assessed by the county commissioners for the improvement of a county road or an inter-county highway? Old Section 6924 made such provision for the improvement of a county road, but this is repealed. My opinion is that there is no authority for the property owner to pay cash when bonds are issued.”

It is assumed that your inquiry relates to assessments on account of improvements made by county commissioners as authorized by Sections 6906 to 6955-2, as well as to assessments on account of state aid improvements made under the provisions of Section 1178 to 1231-11.

So far as concern improvements of the class first named, it is to be noted that there appeared as part of the so-called Cass Act (106 O. L. 574), Section 6924, since repealed, reading as follows:

“The county commissioners shall fix a time within which such assessments may be paid in cash, and they shall give notice by publication once a week for two consecutive weeks in a newspaper published and of general circulation in said county, if there be any such paper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county, of the time within which such assessment may be paid.”

The repeal of said Section 6924 as of June 28, 1917 (107 O. L. 69), leaves the county commissioners without any express statutory authority for accepting payment in cash of assessments made in connection with improvements authorized by said Sections 6906 to 6955-2. However, it might well be urged as a practical proposition that if the assessments made in connection with improvements so authorized must be made and levied against affected lands before bonds may be issued under Section 6929 in anticipation of such assessments and in anticipation of the taxes provided for by Sections 6926 and 6927, then there would be no objection to provision by the commissioners for a period of time before bonds are issued during which said assessments might be paid in cash, and a pro tanto reduction made in the amount of the bond issue. It therefore becomes necessary to inquire whether in fact the assessment must be made and levied before bonds in anticipation thereof may lawfully be issued under Section 6929.

In this connection it is proper to refer to an opinion of this department of date July 3, 1916, appearing in Opinions of Attorney General for that year at page 1141. The following is taken from said opinion:

"If any part of the cost and expense of the improvement is to be specially assessed upon benefited real estate, the further steps provided by Sections 6922 to 6924, G. C., inclusive, should be taken before bonds are issued. That is to say, the surveyor should make his estimated assessment and file the same in the office of the county commissioners, notice that the estimated assessment has been made and is on file and that objections will be heard at a certain time should be given, the assessments should be approved and confirmed either as originally made or as modified by the commissioners and the persons specially assessed should be given an opportunity to pay their assessments in cash. When all the above requirements have been complied with, the county commissioners will be authorized to issue and sell the bonds of the county, if in their judgment it is deemed necessary, in the aggregate amount necessary to pay the estimated cost and expenses of the improvement. If any of the cost and expense of the improvement has been specially assessed and any part of the special assessments has been paid in cash, then, of course, it will not, under any circumstances, be necessary to sell bonds in anticipation of the collection of the special assessments already paid. Answering your question specifically, I advise you that the steps above outlined are jurisdictional to the authority of the county commissioners to issue bonds under Section 6929 G. C."

It is to be observed in connection with the opinion just quoted from that at the time of its rendition said Section 6924, as above quoted, was in full force and effect. This fact may have had much to do with the conclusion reached in said opinion that the making and levying of the assessment was jurisdictional to the authority of the county commissioners to issue bonds under Section 6929 G. C.; although it is to be said, on the other hand, that county commissioners were not as a matter of law under the necessity of issuing bonds to produce funds with which to undertake the improvement, since the improvement might have been paid for directly out of tax funds, and for that reason, the legislature may have intended Section 6924 for those cases only in which the improvement should be paid for out of tax funds rather than with the proceeds of bonds. It is also worthy of note that the attorneys who were acting on behalf of a prospective purchaser of the bonds whose proposed issue gave rise to the opinion in question, did not express the view that there was a necessity for the making of the assessment before bonds were issued,—in fact, these attorneys seem to have been of the very opposite belief (see p. 1143 of opinion).

At all events, a careful study of the statutes as they now exist, in connection with the opinion referred to, fails to reveal any real ground for the conclusion that the making and levying of assessments is a condition precedent to the authority of the commissioners to issue bonds. In that connection, you are referred to an opinion of this department (No. 887) of even date, herewith, directed to Hon. P. A. Saylor, prosecuting attorney, Eaton, Ohio, a copy of which is enclosed. That opinion does not pass upon the question now being considered; but the discussion therein points clearly to the conclusion that the issue of bonds rather than the making of the assessment comes first in point of time.

In addition to the matters mentioned in said last named opinion, mention should be made of certain language appearing in Section 6922 G. C. That section as amended 107 O. L. 100, reads as follows:

"As soon as all questions of compensation and damages have been determined, the county surveyor shall make, upon actual view, an estimated assessment upon the real estate to be charged therewith of such part of the compensation, damages, costs and expenses of said improvement as is to be especially assessed. Such estimated assessment shall be according to the benefits which will result to such real estate. In making such estimated assessment the surveyor may take into consideration any previous special assessments made upon such real estate for road improvements. The schedule of such

estimated assessment shall be filed in the office of the county commissioners for the inspection of the persons interested. Before adopting the estimated assessment so made and reported, the commissioners shall publish once each week for two consecutive weeks in some newspaper published and of general circulation in the county, if there be any such paper published in the county, but if there be no such paper published in said county then in a newspaper having general circulation in said county, notice that such estimated assessment has been made, and that the same is on file in the office of the county commissioners, and the date when objections, if any, will be heard to such assessment. If any owner of property affected thereby desires to make objections, he may file his objections to said assessments in writing with the county commissioners before the time for said hearing. If any objections are filed the county commissioners shall hear the same and act as an equalizing board, and they may change said assessments if, in their opinion, any change is necessary to make the same just and equitable, and such commissioners shall approve and confirm said assessments as reported by the surveyor or modified by them. Such assessments, when so approved and confirmed, shall be a lien on the land chargeable therewith."

Upon first impression, it might be thought the opening sentence of said section implies that the next step to be taken after the passage of the resolution to proceed with the improvement as referred to in Section 6917 is the making of the assessment; and that such an implication carries the further implication that all proceedings relative to the making of the assessment must be complete before the bonds are issued. Any such argument, however, is wholly without foundation, not only for the reasons given in said opinion of even date herewith, but also for the further reason that there is absolutely nothing in the terms of Section 6929 which indicates that the resolution of the commissioners for the issue of bonds may not be passed immediately after the passage of the resolution provided for in Section 6917. In other words, even on the assumption that by reason of the provisions of Section 6922 the matter of assessment proceedings must be begun immediately upon the passage of the resolution provided for in Section 6917 and carried on without interruption until the assessments are approved and confirmed as provided in the last sentence of Section 6922, there is no provision in Section 6929 which prevents the proceedings respecting the issue of bonds from being begun and carried on contemporaneously with the proceedings respecting the asking of the assessment.

It is often found that the history of legislation is helpful in ar-

iving at the meaning of a statute whose terms are of doubtful import. This aid to statutory construction may not be involved with any particular force in construing Sections 6922 and 6929 as they now exist, for the reason that prior to the passage of the Cass Act a number of different systems of county road improvement had been in use. However, a passing reference to certain statutes in force on January 1, 1912, may not be amiss.

Sections 6903 to 6914 as in force at that date, provided for road improvement by county commissioners upon petition of abutting owners. Section 6904 of said series provided for an assessment either upon the foot frontage or benefit plan, and Sections 6907 to 6912 provide for notice, equalization and confirmation of the assessment. Then follows Section 6912-1 which reads as follows:

"After certifying said assessment to the auditor of the county, the commissioners may, in anticipation of the collection of all moneys from all sources, required to be raised for said improvement, whether by assessment, taxation, or by agreement with the township trustees or village council, borrow a sum of money sufficient to pay the entire estimated cost and expense of the improvement, and may issue and sell negotiable notes or bonds of the county, bearing a rate of interest not to exceed five per cent per annum. For the purpose of paying their respective shares of the principal and interest on the notes or bonds authorized to be sold, the county commissioners and township trustees may levy a tax upon all the taxable property of the county or township in addition to all other taxes authorized by law of not to exceed two mills in any one year until said notes or bonds and interest are paid."

Another series of statutes in existence at the date named were Sections 6926 to 6956 G. C., providing for the improvement of "stone and gravel roads" upon petition of property owners. That series of sections also contained provision for an assessment upon adjoining property, and this assessment, according to the terms of Section 6937 might be made "either before the improvement is commenced, or after it is completed." Bonds were authorized by Section 6949 in an amount necessary to pay the cost and expense of the improvement.

Still another series of sections in force at that date providing for improvement of roads by county commissioners, were Sections 6956-1 to 6956-15. Included in that series of sections were provisions for the making of an assessment against adjoining real estate. By the provisions of Section 6956-12 the assessment was not to be made until the improvement had been completed. Bonds

were authorized by Section 6956-15, the first sentence of which reads as follows:

"The county commissioners, in anticipation of the collection of said taxes and assessments, and whenever, in their judgment, it is necessary or desirable, are hereby authorized to sell the bonds of any such county in which such improvement is to be or has been constructed to any amount not exceeding in the aggregate the amount necessary to pay the respective shares of the county, township or townships, and the land owners whose lands in such county are benefited by such improvement."

It is to be noted from these three acts of statutes that in the case of the first of them positive provision was made that bonds should not be issued until the assessment had been completed; in the case of the second of them, bonds might be issued before the assessment was made, since by the terms of Section 6957 the assessment might be made either before the improvement was commenced or after it was completed, and naturally, if the assessment were made after the work were completed, the money represented by the assessment could in many instances be made available only by the issuance of bonds, and bonds would therefore have to be issued before either the work was done or the assessment was made; and in the case of the third of them, the assessment could only be made when the work was completed (Section 6256-12), and hence the authority in Section 6956-15 for the issue of bonds necessarily meant that the bonds would in many cases be issued before the assessments were made, in order to provide funds for the work. It is thus seen from a comparison of the three sets of statutes that in the instance where the legislature intended the assessment to be made before bonds were issued, it said so in plain terms (Section 6912-1); whereas, in the remaining two instances where bonds might be issued before the assessment was made, the fact that bonds might be issued at that stage of the proceedings appears from necessary implication rather than by express words. There is a strong similarity between the terms of said former Section 6956-15 and present Section 6929; and as has already been pointed out, the authority to issue bonds as provided for in Section 6956-15 very plainly includes the power to issue them before the assessments were made.

To say the least, the terminology of the former legislation just noted gives no grounds of objection to the conclusions herein stated relative to the construction of Sections 6922 and 6929.

From what has been said, it follows that the opinion first above mentioned is not adhered to in so far as it may conflict with the view herein expressed that bonds may be issued under Section 6929 prior to the making of the assessment named in Section 6922.

The views above expressed do not furnish a complete answer to your first question, for the reason that nothing has so far been said indicating that the commissioners may not at their option make the assessments before the bonds are issued. It therefore remains to dispose of the question whether any such option lies with the commissioners.

Section 6922 has already been quoted. That section in effect, provides that such part of the "compensation, damages, costs and expenses" of the improvement as in accordance with one of the several plans named in Section 6919 is to be borne by the property owners, shall be especially assessed by the method outlined in Section 6922. Said Section 6919 in setting forth the several plans covering division of cost, nowhere indicates that the shares are to be apportioned on the basis of an estimated cost. The whole import of the section is that the actual cost and not the estimated cost is to be used as the basis of division. Hence, if the first sentence of Section 6922 is taken literally, it is inconsistent with the provisions of Section 6919, for the reason that the actual cost and expenses of the improvement are not known "as soon as all questions of compensation and damages have been determined," and cannot be known until the improvement work is completed. This inconsistency becomes the more evident when it is borne in mind that there is absolutely no provision of statute for an adjustment of such assessments once they have been made and confirmed,—in other words, if the sum total of the part of the cost of an improvement to be specially assessed turns out to be more or less than as shown by the original estimates of the surveyor, and an assessment is made on the original estimates of the surveyor, then there is no authority of statute which provides for a lien for any greater amount than as determined by the assessment made on the estimated cost, and on the other hand, there is no provision whereby the county can return to the property owner any sum of money if his assessment turns out to be less when based on actual cost than when based on estimated cost.

As the view has already been expressed herein that the assessment named in Section 6922 need not be made before bonds are issued, it would seem that the inconsistency between Sections 6919

and the first sentence in section 6922 when read literally becomes immaterial to the practical working of the statutes. In other words, since the making of the assessment named in section 6922 at a particular time, is not jurisdictional to the issue of bonds, the mere matter of time at which the assessment is made must yield to and be governed by the broad intent of section 6919 that the actual cost be used as the basis of the assessment. It is certainly in line with just and reasonable practice that a property owner be required, in the absence of express statutory provision to the contrary, to pay his assessment only on the basis of actual cost, and not on the basis of an estimate which may be greatly in excess of actual cost; and furthermore, it is hardly consistent with good business that the county be placed by mere implication in the position either of rebating sums of money or collecting sums of money consequent upon a difference between an estimated cost and an actual cost. In short, it is to be presumed that the legislature intended that there be but one assessment, and that such assessment have reference to actual cost rather than mere estimates.

This view of the situation solves any seeming difficulties that may appear by reason of the inconsistency mentioned. When the work is done the surveyor is then in position to make an assessment of the part of the cost to be borne by the property owners. He makes up an assessment in estimated form in the sense that he calculates what share each affected tract of real estate is to bear as compared with the percentage of the actual cost borne by the assessed realty as a whole. Such estimate of the share of each property owner is then filed in the form of a schedule with the commissioners, who give notice of its filing, etc. In brief, the estimated assessment made by the surveyor is not made upon the basis of an estimated cost; but it is an estimated assessment made upon actual cost, and the purpose of the estimated assessment is merely to afford a means for the giving of notice and the equalizing of the assessment before its final confirmation and adjustment by the county commissioners.

The view above expressed necessarily leads to the conclusion that no method is open to the county commissioners whereby they may accept assessments in cash without interest. The assessments may be made only after the bonds are issued and the work done, and they must bear interest from the date of and at the same rate as the bonds (section 6923).

The conclusion just expressed in connection with assessments

named in section 6922 is equally applicable to assessments named in section 1214. The latter section is part of the series 1178 to 1231-11 providing for state aid improvements, and owing to the similarity of the two sets of statutes the same general principles respecting assessments are applicable as much to the one set of statutes as to the other.

Your second question is:

"Must the apportionment as provided in Section 1214 be made before the bonds are issued?"

In a general way, the discussion herein as to the assessments mentioned in section 6922 is applicable to assessments under section 1214, and furnishes a negative answer to your second question. It may be added that section 1214 and related statutes contain no language similar to that of the opening sentence of section 6922; hence there is even less ground for supposing that bonds mentioned in section 1223 may not be issued until after the assessment is first made as directed in section 1214, than there is for supposing that an issue of bonds under section 6929 must await the making and levying of the assessment described in section 6922. Clearly, the assessment proceedings provided for by section 1214 are to be had only after completion of the improvement and apportionment of cost thereof by the State Highway Commissioner as directed by section 1211.

It is perhaps proper to make mention here of an opinion of this Department (No. 126) dated March 15, 1919, and directed to Hon. Lloyd S. Leach, Prosecuting Attorney, Coshocton, Ohio. The particular inquiry to which said opinion related was the construction to be placed upon the word "tentative" as used in section 1214,—that is, whether the word referred to a percentage assessment or to a concrete assessment in dollars and cents. The conclusion expressed in the opinion was:

"The words "tentative apportionment" as used in Section 1214 G. C. contemplate the setting forth in dollars and cents of the amount proposed to be assessed against each tract within the zone or district determined upon for assessment purposes."

Said opinion did not involve the question of the proper time of making the assessment, and there is nothing in the opinion indicating directly or indirectly an expression of view as to the time at which the assessment should be made.

Specific answer to your questions is therefore as follows:

1. The road improvement assessments mentioned in sections 6922 and 1214 General Code may be paid in installments only and not as a lump sum, unless the tender of payment in lump includes interest on the assessments in full from date of issue to date of maturity of bonds issued in anticipation of such assessments, rate of interest to be the same as that named in the bonds.

2. The assessment referred to in section 1214 General Code is not to be made before bonds are issued under section 1223 General Code, but is to be made upon completion of the work and apportionment of the cost by the State Highway Commissioner as directed by section 1211 General Code.

*

Though the Omission of the Notice Specified in Section 2648 General Code, May not be Vital, it is the Duty of the Treasurer to Give Such Notice as Required in that Section and in Section 5262 General Code, in the Event That the Tax Rates are Revised After the First Notice Has Been Given and the Treasurer is Authorized to Incur the Expense Involved in Giving Such Notice.

No. 795—(Opinion Dated November 19, 1919.)

Hon. R. A. Kerr, Prosecuting Attorney, Troy, Ohio.

Dear Sir: I hasten to answer your letter of November 11th in which you submit certain questions respecting the effect of a favorable vote of the electors on the submission of the question authorized to be submitted by sections 6926-1 et seq. of the General Code, as recently enacted. One of your questions is, it is believed, fully covered by an opinion addressed to the Tax Commission of Ohio, a copy of which you have. The remaining question may be stated as follows:

Where the county road levy has been exempted from the fifteen mill limitation in accordance with the approval of the electors and, as held in the opinion referred to, the tax rates for the ensuing year are revised accordingly, but it happens that the county treasurer has given notice as required by law of the rates levied for the various purposes, should not such notice be given again?

The section requiring the giving of notice of the tax rates is as follows:

Section 2648 General Code:

"Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county

treasurer shall immediately cause notice thereof to be posted in three places in each township of the county, one of which shall be at the place of holding elections in such township, and also be inserted for six successive weeks in a newspaper having a general circulation in the county. Such notice shall specify particularly the amount of taxes levied on the duplicate for the support of the state government, the payment of interest and principal of the public debt, the support of state common schools, defraying county expenses, repairing of roads, keeping the poor, building of bridges, township expenses and for each other object for which taxes may be levied on each dollar valuation."

It is the opinion of this department that compliance with this section would require the repetition of the notice. In effect, the revision of the rates even after the duplicate is in the hands of the treasurer for collection would constitute a new delivery of the "duplicate of taxes assessed."

Whether or not the section is merely directory, so that failure to comply with it would not invalidate the tax levies, need not be considered. Even a directory statute should be complied with, and the expenditure of funds for legal advertising, etc. involved in such a compliance would be perfectly legal. For example, failure to publish a proclamation of election would not invalidate the result of the election if it were duly held, and no one were actually prejudiced by such failure. But the mere fact that a notice intended for the benefit of the public may not be so vital as that its omission will invalidate a proceeding, does not militate against the view that it is the duty of the public officers to give the notice.

Though inclining to the view therefore that the omission of the notice specified in section 2638 General Code may not be vital, you are advised that it is the duty of the treasurer to give such notice as required in that section and in section 6252 General Code, (see *State vs. Commissioners*, 7 N. P., 239), in the event that the tax rates are revised after the first notice has been given, and that this being the case the treasurer is authorized to incur the expense involved in giving such notice.

SECRETARY OF STATE

NEW INCORPORATIONS.

The Pawnee Equity Exchange Co., Pawnee Station; \$10,000. E. H. Sanders, L. G. Sanford, F. A. Falconer, H. E. Kilmer, P. E. Hellman.

The Schlanser Delicatessen Co., Cincinnati; \$10,000. Lawrence Schlanser, William E. Schlanser, Elmer Kinser, F. J. Schlanser, Walter D. Murphy.

The Elroy Supply Co., Elroy; \$10,000. F. M. Coppess, Jesse L. Poling, Samuel Rittgers, John Zech, George F. Riegel.

The Bleher-Marmon Manufacturing Co., Lima, \$25,000. W. H. Bleher, Owen Marmon, Earl Marmon, E. L. Hughes, H. W. Myers.

The Carl F. Sheffer Co., Dayton, \$50,000. C. F. Sheffer, H. L. Orrman, Elizabeth Scheffer, Paul C. Swift, Mary M. Orrman.

The V. L. Co., Cleveland, \$2,000. George Q. Keeley, C. A. Byrne, M. Bernhardt, A. J. Roth, A. M. Kelly.

The Columbus Washboard Co., Columbus, \$10,000. R. M. Adair, C. N. Replage, Harold B. Watson, William P. Tracy, Singleton P. Outhwaite.

The Economy Brass Manufacturing Co., Cincinnati, \$20,000. M. BaShrach, W. E. Rutter, Philip P. Bundman, Joseph Matthew Pfeiffer, Louis Katz.

The Reliable Home Builders' Association Co., E. Cleveland, \$250,000. O. R. Leach, Samuel R. Johnson, E. G. Luke, C. M. Haake, Bennett Fenberg.

The Lancaster Real Estate Co., Lancaster, \$50,000. H. C. Jordan, R. P. Haas, John Brenensruhl, Lulu B. Jordan, Ora M. Haas.

The Eppinger Produce Co., Cincinnati, \$5,000. Stanley M. Bauer, Jeannette Eppinger, Helen Eppinger, Charles H. Hoffmeister, Emma Eppinger.

The Canton Automotive Sales Co., Canton, \$10,000. Thomas E. Adkins, John M. Sharjo, Christian V. Sommer, C. A. Schutzman, Edward W. Markling.

The Forest Manufacturing Co., Forest, \$10,000. D. L. Cook, J. S.

Baher, W. W. Burk, James W. Cook, George M. Forney, G. A. Zimmerman, E. D. Fishburn.

The Ohio Carpet Cleaning Co., Cleveland, \$5,000. Leo Soglovitz, K. B. Smith, Ruth S. Linder, Stella Talama, Sulvia V. Hlad.

The Superior-West Co., Cleveland, \$1,250. David L. Johnson, John H. Watson, Jr., M. C. Byrnes, H. E. Robertson, L. M. Henders.

The Sealand Motor Co., Cleveland, \$100,000. Frank N. Sealand, Thos. H. Jones, Gardner Abbott, James P. Wood, C. Reavis, Jr.

The York Township Threshing Co., New Philadelphia, \$5,000. Ed. S. Swartz, George C. Lumback, John E. May, Jacob Lawrence, A. A. Lahmers, J. H. Mutti.

The Stamp Collectors Co., Columbus, \$10,000. G. W. Linn, George K. Smith, Henry S. Adair, E. L. Linn, A. F. Muething.

The Belle-Bridge Oil & Gas Co., Youngstown, \$125,000. H. C. Bye, D. F. Zellner, R. C. Huey, B. A. Zollner, John Buffalo, Archbald Clark.

The H. F. Evans Co., Cleveland, \$75,000. J. J. Sugrue, H. S. Minich, W. H. Seibel, E. M. Simonds, L. D. Rothman.

The Levin Co., Youngstown, \$100,000. Abe Levin, Sarah Rubin, Sophie Levin, H. N. Schoman, Joseph B. Snyder.

The Villas Organization Co., Cleveland, \$5,000. M. A. Elconin, Harry Steuer, Samuel Elconin, A. J. Halle, D. B. Stone.

The Norton Hardwood Co., Cleveland, \$20,000. L. M. Menders, B. E. Robertson, Aldis H. Wurtz, Walter E. Grammes, C. M. Burke.

The Summit Coal and Mining Co., Canton, \$50,000. M. D. Ratchford, J. J. Ratchford, Ira A. Manderbaugh, V. L. Ney, William P. Halter.

The Champion Foundry Co., Piqua, \$50,000. J. E. Brvan, Charles L. Hinsch, C. F. Stickler, L. A. Frazier, Maurice Wolfe.

The Cadiz Block Coal Co., Cadiz, \$200,000. Carl J. Wheeler, C. W. Wenner, Albert Wagner, Matthew Lorenz, Frank W. Adams.

The E. R. Smead Co., Cleveland, \$10,000. M. M. Fiedner, M. E. Reynolds, A. O. Dickey, H. W. Sisson, P. A. White.

The Morgan County Motor Co., McConnelsville, \$50,000. F. M. Fisher, C. E. Dougan, J. F. Dougan, H. H. Fisher, F. R. Dougan.

The Lawnview Drug and Chemical Co., Cleveland, \$10,000. A. J. Newman, W. B. Kleinman, M. J. Anderson, W. P. Bruder, H. Baer.

The Matt Spring Tire Co., Toledo, \$25,000. R. T. Garrison, R. V. Phillips, E. S. Damon, L. W. Hunt, Frank Remmel.

The Pittsford-Garber Baking Co., Akron, \$15,000. J. Pittsford, E. M. Troster, E. L. Garber, J. H. Garber, T. G. Pittsford.

The Armwood Co., Columbus, \$15,000. M. Jacobs, E. Wood, E. Armstrong, Warren Armstrong, Sarah R. Greene.

The Dearness & Von der Ahe Tire Co., Cincinnati, \$10,000. D. F. Dearness, Fred Von der Ahe, C. E. Dornette, G. Reinzan, George A. Dornette.

The Galion Co-operative Store Co., Galion, \$10,000. R. J. Hettiubaugh, E. C. Bortner, G. W. Fabian, George M. Edler, G. C. Gillespie.

The Pennsylvania Railway Employees' Supply Co., Mt. Vernon, \$5,000. H. G. Wav, Fred H. Farrison, J. C. Levering, H. J. Shipley, George Harris.

The John Nagely Co., Toledo, \$100,000. John Nagely, Remington Nagely, Dean Higgins, I. B. Higgins, Lucy Nagely.

The Touraine Cleveland Co., Cleveland, \$10,000. Charles Follett, N. P. Beall, J. W. Eckelberry, W. B. Stewart, W. H. Nye.

The Broadson Realty Co., Cleveland, \$10,000. H. Frankel, P. Frankel, C. Frankel, F. Frankel, Angela Harhaus.

The Renlim Manufacturing Co., Cleveland, \$10,000. J. S. Hurd, M. M. Witham, H. B. H. Hoener, Charles W. Savage, Blase A. Buonpane.

The Beaver-Rosecrans Construction Co., Cleveland, \$10,000. W. D. Bacon, W. D. Bacon, Jr., J. R. Beaver, E. J. Rosencrans, Jr., Frank Houska.

The Super-Cord Tire Co., Dayton, \$25,000. I. R. Shupp, S. L. Finn, F. S. Breene, Emma Schellenbach, Dor M. Sanger.

The Moran Oil & Refining Co., Akron, \$100,000. H. P. Moran, W. I. Alexander, T. W. Peck, F. B. Murray, B. E. Rushka.

The Gobetz Mattress and Spring Bed Co., Akron, \$50,000. J. Gobetz, William J. Nabors, H. E. Winland, Clifford E. Winland, J. E. Hird.

The R. D. Neale Co., Cleveland, \$25,000. G. B. Brown, B. E. McCayne, E. D. Kitchin, H. G. Lowe, J. E. Haag.

The G. V. Sowers Co., Mansfield, \$10,000. G. V. Sowers, Harry Gurney, Sarah Sowers, W. J. Spreng, Sarah E. Miller.

The Consolidated Exhibitors' Co., Toledo, \$10,000. Julia Stahle, A. J. Smith, Karl Kniesser, Herman H. Stahle, C. M. deGrasse.

The Mariona Grain & Supply Co., Marion, \$150,000. C. E. Schaad, A. H. Trout, C. M. Briggs, H. T. Myers, Depew Head.

The Akron Machine, Mold, Tool & Die Co., Akron, \$100,000. M. H. Behncke, D. W. Mason, C. G. Wise, M. M. Ryle, R. I. Moore.

The National Specialties Co., Cincinnati, \$10,000. C. E. Brehm, E. H. Matthews, C. R. Dunton, J. W. Matthews, B. E. Pace.

The Kline Co., Cleveland, \$10,000. M. McDowell, Louis R. Lanzo, Frank J. Noonan, A. R. Vanek, L. L. Marshall.

The Hollansburg-Co-operative Co., Hollansburg, \$20,000. H. R. Harlev, J. L. Beatty, L. V. Mekesell, E. E. Sinks, D. P. Albright.

The Eureka Brass Works Co., Cincinnati, \$60,000. George Angert, Emil Claussnitzer, H. F. Heinzerling, Mary Angert, Senta Heinzerling.

The Wilkshire-Wilk Co., Cleveland, \$5,000. Walter S. Wilkshire, W. A. Wilk, Edward W. Dissette, Frank A. Greene, Andrew J. Cole.

The Beaver Canning & Packing Co., Beaver, \$20,000. W. W. Russell, C. C. Bunarner, A. S. Givens, H. E. Albert, W. H. Thompson.

The John O. Munn Co., Toledo, \$10,000. J. O. Munn, W. M. Findlay, E. M. Hamnett, H. R. Miller, Sterling Beeson.

The Six Michaelson Brothers Co., Cincinnati, \$15,000. Louis Michaelson, Ben Michaelson, I. Michaelson, J. P. Michaelson, Robert Michaelson, Dave Michaelson.

The Burke Safety-Gate Co., Cincinnati, \$20,000. L. K. Siehl, J. B. Burke, J. L. Cooke, A. S. Pfadt, G. W. Sommers.

The Bruecker Press Co., Cincinnati, \$100,000. H. A. Bruecker, Arthur Vos, A. M. Vos, E. L. Bruecker, M. E. Condon.

The Community Development Co., Toledo, \$10,000. C. A. Billat, W. R. Boyd, J. G. Stockley, James Oates, Robert C. Baker.

The Frank Bros. Co., Marion, \$100,000. G. E. Frani, A. L. Bintz, C. H. Frank, Hortense C. Frank, A. Catherine Bintz.

The Cincinnati Denim Exchange Co., Cincinnati, \$10,000. A. M. Kuechler, A. Beatty, R. B. Hachen, C. Griehl, M. A. Juhling.

The Book Realty Co., Youngstown, \$25,000. W. J. Thompson, R. F. Book, Edgar J. Thompson, E. Madden, Jr., K. F. Trunk.

The Laughrat Enamel Products Co., Toledo, \$56,000. R. M. Ferguson, Boyd Scott, H. A. Seward, Louis H. Kreke, John D. Rhoades.

The Prospect-Wilson Building Co., Cleveland, \$2,500. Charles L. Stocker, R. F. Bearwald, G. M. Oyer, G. A. Tenbusch, E. E. Criswell.

The Antenen Engineering Co., Hamilton, \$20,000. E. W. Antenen, H. G. Antenen, Fred Antenen, J. E. Stewart, Carl C. Antenen.

The Municipal Realty Co., Cleveland, \$100,000. G. W. Leddon, Elma Gawne, H. M. Dorer, K. W. Howe, R. L. Carter.

The Mellot Co., Bellaire, \$60,000. W. D. Mellot, J. F. Mellot, Edwin M. Brannen, J. A. Gaughan, Albert Grafton.

The Shenango Lumber Co., Youngstown, \$150,000. D. B. Frampton, G. W. Havnor, O. O. Biddle, L. R. Plummer, L. F. Foster.

The J. C. Newman Cigar Co., Cleveland, \$450,000. J. C. Newman, G. R. Newman, M. P. Goodman, M. E. Newman, M. W. Newman.

The Mansfield Vitreous Enameling Co., Mansfield, \$100,000. Paul R. Tappan, B. R. Ahrendt, H. C. Sanford, A. C. Thoades, E. M. Olin.

The McGorray Brothers Co., Cleveland, \$15,000. F. F. Klingman, J. W. McGorray, J. J. O'Malley, M. R. Burnage, R. L. Davis.

The Superior-West Sixth Co., Cleveland, \$1,250. D. L. Johnson, J.

H. Watson, M. C. Byrnes, B. E. Robertson, L. H. Henders.

The M. W. Hutchison — Sons Co., Cambridge, \$25,000. M. W. Hutchison, R. M. Hutchison, J. W. Hutchison, M. T. Hutchison, Charles A. Stein.

The Cincinnati Brassiere Co., Cincinnati, \$10,000. S. Baum, A. Weiss, Goldie Baum, Ida Weiss, J. E. Rapoport.

The Cuyahoga Foundry Co., Cleveland, \$100,000. E. Knapp, V. Foukla, Anton Anyz, Charles Wachalex, John Vild.

The Hamilton Brokerage Co., Columbus, \$1,200. A. M. Johnson, O. C. Gohlke, L. F. Moffit, C. W. Welsh, F. J. Bell.

The Elwell-Parker Electric Co., Cleveland, \$700,000. C. F. Reavis, J. M. Garfield, J. P. Wood, W. B. Cockley, R. C. Hyatt.

The Conservative Building & Investment Co., Cleveland, \$60,000. D. D. Hurlbut, M. J. Speiber, E. H. Tracy, R. Gibbons, E. M. Gibbons.

The Commercial Transit and Storage Co., Akron, \$315,000. D. C. Murphy, R. D. Watson, W. F. Selby, R. E. Hutton, A. T. Barnes.

The Northside Paint Co., Cincinnati, \$10,000. C. S. Sinclair, H. C. Linsey, Louis Roeller, P. H. Smyth, Rida V. Sinclair.

The Alverth Improvement Co., Cleveland, \$100,000. B. Newberger, Nathan Herstam, M. Herstam, Wm. Madling.

The Miami Electric Co., Troy, \$10,000. J. Herzstam, H. W. Shelby, Earl Wiley, R. A. Myers, R. E. Shelby.

The Stone Baking Co., Toledo, \$25,000. E. D. Stone, Mark Pownall, W. B. Howell, L. H. Wickender, G. Ohlinger.

The Snyder Automobile Co., Columbus, \$50,000. E. B. Snyder, G. E. Snyder, George Snyder, S. J. Snyder, H. E. Stafford.

The Hess Body Co., Cleveland, \$100,000. L. D. Mount, W. L. Redhead, Harry Hess, E. B. Underhill, T. D. Lamb.

The Home Buyers' Investment Co., Cleveland, \$30,000. L. E. Barrett, N. Unger, Anna Berman, M. G. Berman, H. V. Berman.

The Snyder Lumber Co., Carey, \$100,000. Anna A. Snyder, Maude S. Snyder, George W. Snyder, C. C. Snyder, Howard E. Snyder.

The Lohman Bros. Co., Cleveland, \$5,000. H. M. Farnsworth, E. E. A. Metzger, Conrad Hessler, B. N. Farnsworth, F. M. Farnsworth.

The Hotel Franklin Co., Akron, \$100,000. M. J. Firey, F. Seiberling, W. E. Slabaugh, R. Guinther, Etta Hamlen.

The Amalgamated Automobile Co., Toledo, \$35,000. F. J. Conrad, H. F. Menne, L. D. Walters, L. W. Storey, A. L. Husted.

The Jones Realty Co., Toledo, \$10,000. F. H. Jones, W. M. Jones, Lucy Jones, B. M. Compton, Clara C. Linkugel.

The Cargenie Square Realty Co., Columbus, \$40,000. J. E. Brown, A. W. Prout, J. J. Coons, H. M. Brundage, James M. Butler.

The Acme Lumber Co., Columbus, \$50,000. F. M. Koons, B. A. Headley, Leo W. Koons, E. H. Chandler, E. Bishop.

The California Hollow Oil and Gas Co., East Liverpool, \$15,000. Edwin Roberts, T. L. Kaufman, J. Costello, J. W. Swartz, S. C. Whittenberger.

The Firestone Park Builders' Supply Co., Akron, \$200,000. G. P. Webber, M. M. Flickinger, N. B. Alexander, L. T. Lyle, L. N. DuBois.

The Concrete Material and Sand Co., Cleveland, \$300,000. B. L. Banfer, A. C. Carter, E. R. Bayes, L. E. Giel, E. M. Kossin.

The Ritchie-Wertz Manufacturing Co., Dayton, \$100,000. C. B. Wertz, J. E. Ritchie, Carrie Wertz, J. A. Ritchie, William J. Feldmaier.

The Summitville Clay Products Co., Youngstown, \$150,000. J. B. Morgan, G. F. Hammond, W. P. Barnum, P. Feibus, S. B. Mitchell.

The Daily Coal Mining Co., Akron, \$200,000. C. W. McLaughlin, L. B. Huber, A. S. Holleyhead, C. R. Daily, Etta Hamlen.

The Franklin Tire & Rubber Co., Kent, \$101,000. W. A. Cluff, J. H. Diehl, H. W. Sidnell, D. M. Mason, J. G. Miller.

The Pfahl Electric Co., Cleveland, \$25,000. J. A. Pfahl, P. U. Osterland, E. C. Osterland, Helen Scheid, L. G. Schoolev.

The Ohio Distributors' Co., Columbus, \$30,000. H. F. Eppens, G. P. Fopens, M. B. Parker, W. H. Miles, Harry Maddy.

The Crescent Ice and Coal Co., Alliance, \$100,000. S. C. Stone, W. N.

Stone, J. S. Stone, Ed. H. Klingler, R. D. Reeder.

The American Watch and Repairing Co., Cleveland, \$5,000. D. Zolove, Mary Connley, N. A. Arend, H. M. Ungerman, L. S. Hill.

The Robertson Co., Cleveland, \$25,000. W. Robertson, E. W. Dissette, E. S. Byers, F. A. Green, Glenn D. Whisler.

The Freeman Co., Cleveland, \$10,000. A. L. Freeman, N. K. Freeman, A. L. Barbian, A. A. Woldman, B. G. Ruby.

The Anchor Paint and Varnish Co., Cleveland, \$1,000. L. A. Corlett, R. W. Yocum, H. A. Faage, L. E. Weininger, J. D. Fuller.

The Belle Center Light & Power Co., Belle Center, \$25,000. J. C. Martin, R. F. Harrod, E. M. McLain, E. E. Sykes, P. M. Stewart, Ed. Manahan.

The E. H. Karhcer Forging Co., E. Liverpool, \$10,000. E. H. Karcher, L. F. Diemer, Nellie E. Karcher, Catherine Diemer, J. F. Cavit.

The American Home Building Co., Cincinnati, \$30,000. R. L. Shickner, Louis Weiland, Fred Weiland, Oberst Burbank, H. J. Schwer.

The Electric-Alloys Co., Elyria, \$100,000. A. J. Kranz, O. H. Spengler, M. Siglow, Sigmond Sander, T. Wooster.

The Oliver Motor Truck Co., Cleveland, \$50,000. R. B. Oliver, C. C. Wolford, H. R. Lower, M. R. Davis, W. A. Rogers.

The Ohio Seed Co., Wapakoneta, \$25,000. L. H. Tangeman, H. O. Kuck, E. Wierwille, Hen H. W. Kohlman, Edwin R. Kuck.

The Butler County Electric Co., Hamilton, \$10,000. J. Herzstam, H. G. Lyon, R. A. Myers, S. S. Kehoe, R. S. Crane.

The People's Real Estate Agency Co., Wadsworth, \$100,000. S. C. Durling, C. A. Curtis, R. A. Auble, Morran Neath, H. A. Baldwin.

The Kios Lumber Co., Youngstown, \$50,000. Andrew Kicos, John C. Dulovich, Stevan A. Herman, Martin Dulovich, Paul Dulovich.

The Rodgers Baking Co., Columbus, \$75,600. J. F. J. Rodgers, B. M. Ellis, P. A. Vogel, A. C. Ewald, F. J. Wright.

The Stricker-Reitman Co., Cincinnati, \$200,000. Clifford Stricker, E. L. Stricker, P. Stricker, E. C. Rabe, L. J. Heilker.

The United Scrap Iron & Metal Co., Columbus, \$50,000. Samuel L. Grundstein, Jake Krakowitz, Louis Duga, M. Beim, L. W. Josephson.

The West Side Realty Co., Cleveland, \$50,000. Fred E. Pfeiffer, Fred J. Perkins, Frank B. Fultz, G. E. Senkbeil, R. H. Senkbeil.

The Eagle Realty Co., Rossford, \$10,000. George Purcell, Sr., C. E. Taylor, J. A. Logan, J. R. Purcell, George Purcell, Jr.

The Button-Waddington Oil & Gas Co., Cleveland, \$10,000. C. B. Waddington, F. S. Bennett, H. C. Waddington, J. W. Goldhamer, A. E. Goldhamer.

The Freight Audit Co., Cleveland, \$75,000. F. M. Lavelle, D. T. May, Perry D. Caldwell, D. L. Schwab, R. P. Snyder.

The Keystone Investment Co., Cleveland, \$25,000. E. P. Holler, F. J. Shannon, J. W. Biggerstaff, C. P. Holler, J. W. Black, J. M. Rowan.

The Middle Point Banking Co., Middlepoint, \$40,000. E. A. Leathers, W. H. Pollock, J. C. Stemen, J. H. Scott, G. R. Reed, T. M. Baxter, Oreal Lewis.

The Geneva-On-The-Lake Transit Co., Geneva, \$10,000. F. W. Baird, J. B. Fuller, F. J. Hoffman, W. H. King, A. McPhail.

The Allen H. Frost Co., Springfield, \$25,000. A. H. Frost, Mary Ramsey, O. O. Havman, A. C. Eckert, Roscoe C. Lorentz.

The Farmers' Equity Co., of Cragston, Ohio, \$50,000. M. E. Cole, J. W. Ollen, E. S. Miller, J. E. Sleith, M. M. Gersener, M. H. Benjamin, J. E. Whosetle.

The Akron Indian Football Team, Akron, \$5,000. R. G. Waldsmith, Park P. Crisp, R. A. Mertz, J. R. Stanley, H. P. Lowell.

The Dunkirk Cigar Co., Dunkirk, \$5,000. W. R. Pfefferle, S. C. Harman, R. S. Wolfey, O. Friedly, J. W. Seecardin, C. M. Jones, G. B. Rounds, C. L. Fuls.

The Midway Oil & Gas Co., Canton, \$100,000. M. K. Boone, J. W. Hess, Leon Schiff, O. N. Bannon, Geo. C. Feik.

The Joseph & Feiss Co., Cleveland, \$75,000. H. H. Booth, E. E. Kohl, H. H. Serlin, E. Gavin, A. A. Herskowitz, B. Lawrence, E. O. Nungesser.

Increases.

The Portage Packing Co., Akron, \$500,000 to \$1,000,000.

The Standard Tailoring Co., Cleveland, \$35,000 to \$70,000.

The Sturtevant-Jones Co., Toledo, \$5,000 to \$100,000.

The Broadway Lumber Co., Cleveland, \$75,000 to \$100,000.

The Smith-Phillips China Co., East Liverpool, \$150,000 to \$200,000.

The Lakewood Publishing Co., Lakewood, \$10,000 to \$25,000.

The Pleasant Ridge Building & Loan Co., Pleasant Ridge, \$2,000,000 to \$3,000,000.

The Bond Oil Co., Cincinnati, \$25,000 to \$50,000.

The Chilcote-Sargent Co., Cleveland, \$60,000 to \$150,000.

The C. L. Braucher Co., Columbus, \$25,000 to \$75,000.

The Painter Confection Co., Mansfield, \$40,000 to \$100,000.

The New Tread Tire Co., Columbus, \$100,000 to \$500,000.

The Packard Electric Co., Warren, \$100,000 to \$1,500,000.

The Sidney Manufacturing Co., Sidney, \$200,000 to \$300,000.

The Corey Candy Co., Toledo, \$10,000 to \$25,000.

The Middletown Journal Printing Co., Middletown, \$10,000 to \$75,000.

The Soline Oil Co., Cleveland, \$10,000 to \$100,000.

The R. K. Crawford Land Co., \$10,000 to \$200,000.

The Gifford Brothers Co., Cleveland, \$10,000 to \$25,000.

The Frank Tea and Spic Co., Cincinnati, \$150,000 to \$500,000.

The A. & B. Box Company, Cleveland, \$25,000 to \$150,000.

The Central Optical Co., Cincinnati, \$10,000 to \$25,000.

The Stahl Gear and Machine Co., Cleveland, \$50,000 to \$100,000.

The Empire Tile Co., Cleveland, \$125,000 to \$425,000.

The Columbus Guarantee Mortgage Co., Columbus, \$300,000 to \$600,000.

The Sterling Lumber Co., Cincinnati, \$25,000 to \$75,000.

The Arch Realty Co., Akron, \$24,000 to \$200,000.

Decrease.

The North-Eastern Ohio Real Estate Co., Youngstown, \$200,000 to \$100,000.

The Keagy & Lear Machine Co., Coshocton, \$50,000 to \$35,000.

PUBLIC UTILITIES COMMISSION

No. 1896—In the Matter of the Application of The Belle Center Light & Power Company to Issue and Dispose of Common Capital Stock. Prayer Granted.

(Dated February 6, 1920)

This day this matter came on for final consideration upon the application of The Belle Center Light & Power Company (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and dispose of common capital stock of the par value of twenty-five thousand dollars, the proceeds to be used to acquire the municipal electrical distributing system in the village of Belle Center, Ohio, reconstruct and equip the same for the general distribution and sale of electrical energy in said village, and construct a transmission line connecting said system with the lines of The Ohio Electric Railway Company at Huntsville, Ohio, where electrical energy will be obtained for distribution.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, that the applicant has in contemplation the acquisition and erection of a comprehensive electrical distributing system in the village of Belle Center, Ohio, connected, by a transmission line, with the lines of The Ohio Electric Railway Company at Huntsville, Ohio, the cost of which, fully equipped, will be not less than the sum of \$25,000.00, and that the issue of applicant's common capital stock of the par value of \$25,000.00 is reasonably required and the money to be procured thereby necessary for the aforesaid acquisition, construction, completion, extension and improvement of applicant's facilities, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Belle Center Light & Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-five thousand dollars (\$25,000.00), and that

said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The acquisition of the electrical distributing system in the village of Belle Center, the reconstruction and equipment of the same and the construction and equipment of a transmission line connecting said distributing system with the lines of The Ohio Electric Railway Company at Huntsville, Ohio, where electrical energy is to be procured for distribution in said village of Belle Center, the cost of all of which has been estimated at the sum of \$25,000.00. It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar semi-annual period, of the issue and disposition of said capital stock and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1824—In the Matter of the Application of The New Bremen-Minster Gas Company, a Corporation and J. F. Arnold, an Individual, for Leave to Withdraw Its and His Natural Gas Service and Facilities From the Municipalities of New Bremen and Minster, Both in Auglaize County, Ohio, and all Natural Gas Consumers Therein That Have Been Supplied by Either or Both Parties Hereto. Finding by the Commission.

(Dated January, 30, 1920)

This matter was heard on the motion of the villages of New Bremen and Minster to dismiss the application of the Gas Company.

Five separate grounds are set forth in the motion.

The first alleges that the commission has no jurisdiction of the subject matter.

This application was made under the recent act of the legislature, commonly known as the Miller Act, which specifically confers upon this commission the jurisdiction in matters of this kind.

The second ground sets forth that the commission has no jurisdiction over the villages of New Bremen and Minster. If the evidence is sufficient to warrant the relief prayed for in the application, the order would be directed to the Gas Company and not to the villages.

The third ground alleges that there is an action pending between the same parties for the same cause. Since the act under which this action was brought confers exclusive jurisdiction upon the commission in the matter of abandoning service by a public utility, there could not be another action pending in any other tribunal "for the same cause."

On hearing of the motion some evidence was submitted, and the petition filed in the Court of Common Pleas by the villages against the Gas Company was offered as an exhibit. Upon examination of that petition, which was filed in the Court of Common Pleas of Auglaize county, Ohio, November 14, 1919, it appears that after describing the parties, the only pertinent allegations upon which an injunction was sought, are that on the first day of May, 1888, the predecessor of The New Bremen-Minster Gas Company secured a franchise to lay its pipes and mains in the said villages and to furnish natural gas to the inhabitants thereof; that said franchise was accepted and the company to which it was granted installed its gas system in accordance therewith and exercised its rights and privileges thereunder.

There is no allegation setting forth the term of the franchise and nothing to indicate whether or not the franchise has expired. It is further alleged that on the first day of August, 1918, The New Bremen-Minster Gas Company, in addition to the liabilities under its franchise further agreed to furnish additional gas under said franchise from the New Knoxville gas field, but there is no allegation in the petition as to the duration of said contract and as to whether or not it is still in force.

It is alleged that the inhabitants of the villages have prepared their residences for the use of natural gas, and that notice has been served upon the villages that the Gas Company is about to remove its mains from the streets and alleys, but there is no allegation that in doing so they are violating any contract, franchise or rate ordinance. It is alleged only that in case they carry out their purpose the village will suffer great and irreparable loss. And notwithstanding the fact that, as disclosed at the hearing, no gas had been furnished by the Gas Company in either of these villages for ten months prior to the filing of the petition, an injunction was asked restraining them from disconnecting the service.

It is very evident that this is not "for the same cause" as set forth in the application filed herein.

The fourth ground is that the application does not state facts which show a cause of complaint.

Upon examination of the application it appears that all the necessary allegations which are required under the provisions of the Miller Act are contained therein.

The sixth ground of the motion is that the rights of the villages under their franchises and contracts are protected by Article II, Section 28 of the Constitution of Ohio, and Article I, Section 10 of the Constitution of the United States.

If it be true that the villages hold such contracts as preclude the right of the Gas Company to withdraw its service notwithstanding the Miller Act, that is a question for the courts and not for this commission. It is the duty of this commission—an administrative body—to administer the law as it finds it, and if it is unconstitutional, that question can be raised in the Supreme Court on review of the findings of the commission.

For these reasons the motion will be denied and the defendants given opportunity to answer the complaint.

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No. 1875—James Hudson, John Hudson and O. E. Seruby, Complainants, vs. John C. Lake, B. A. Lake, B. A. Lake & Company, the Monitor Bank, Big Prairie, Ohio; C. P. Kindig, J. P. Grassbaugh, A. V. Rush, and C. J. Vaughn, Defendants. Finding by the Commission.

(Dated February 4, 1920)

This matter was submitted upon the pleadings and the evidence, upon consideration whereof, and being fully advised in the premises, the commission does find and hereby

Orders, That the furnishing of natural gas service for public and private use in and about the village of Big Prairie, Wayne county, Ohio, as at present conducted, is in violation of the Public Utility Act of Ohio, and that such service be discontinued or, by the parties defendant herein, reorganized upon one of the following bases, viz:

- (1) That the facilities incident to the furnishing of such service be operated by a bona fide mutual concern, duly incorporated, in strict conformity to the laws, rules and regulations defining a mutual public utility not subject to the jurisdiction of this Commission, or

- (2) That such facilities be operated by a bona fide public utility, duly incorporated or organized, in full conformity with the requirements of law governing such concerns, among which are the filing of schedules and annual reports with this

Commission, and the furnishing of service to all applicants therefor, at a resonable and just rate, rental, toll or charge for such service, without discrimination.

It is further

Ordered, that the commission finds and hereby fixes the first day of March, 1920, as a reasonable time within which to comply with the aforesaid order.

3

No. 1806—In the Matter of the Application of North Lima Gas Company, the Firm Name or Style of a Partnership Composed of G. M. Heeter, Annie M. Heeter, C. C. Heeter and J. W. Heeter, for Leave to Withdraw Natural Gas Service from the Villages of New Springfield and North Lima, Ohio. Prayer Granted.

(Dated February 4, 1920)

This matter, after full hearing (due notice of which was given as required by law), was submitted upon the pleadings and the evidence.

Upon consideration whereof, and being fully advised in the premises, the commission finds that said utility was in operation for a period of five years next preceding the date of the filing of the application herein, and, having due regard for the welfare of the public and the cost of operating the applicant's facilities and the furnishing of its service, is satisfied that its authority should be granted for the abandonment of applicant's facilities and the withdrawal of its natural gas service upon the first day of April, 1920. It is, therefore,

Ordered; That the said North Lima Gas Company, (the firm name or style of a partnership composed of G. M. Heeter, Annie M. Heeter, C. C. Heeter and J. W. Heeter), be, and hereby it is authorized, upon the first day of April, 1920, to abandon its facilities for the furnishing of natural gas service in and about the unincorporated villages of New Springfield and North Lima, Mahoning County, Ohio, and to withdraw its natural gas service to the consumers thereof.

ATTORNEY GENERAL

The Effect of the Hughes Health Law and the Griswold Act Amending Thereof Was to Abolish Municipal Health Boards and in Place Thereof to Create and Have Established District Health Boards.

(Opinion 966—Dated January 28, 1920)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"We are enclosing you herewith copy of ordinance, which the council of the city of Newark contemplate passing, and are quoting from a letter from the clerk of council of Newark, as follows:

"I am enclosing an ordinance we wish to pass. Our solicitor says that under House Bill 633 (Griswold act) all city boards of health cease to be unless re-appointed by the mayor. Is this a fact? *** Can we under the new law appoint a new board and can we have all new appointments made, such as clerk, food inspector, sanitary officer, etc. Can I get the information by Thursday so the ordinance may be passed on the 19th ***."

"We have written the clerk of council that this is a deep question which will require a written opinion, and we respectfully ask a written opinion in answer to his questions."

The questions raised by your correspondent, involves the status of city boards of health and their employes, established under Section 4404 General Code, prior to the passage of the Hughes and Griswold acts, so-called, by the present General assembly.

The former act is found in 108 O. L. (part 1), 236, being designated as Sections 1261-16 et seq., 1245 et seq., and 4404 et seq. It was passed April 17, 1919, and became effective in part August 12, 1919, while Section 29, the repealing section, became effective January 1, 1920.

The latter act (H. B. 633) was passed December 18, 1919, as an emergency measure and was filed in the office of the secretary of state January 2, 1920, at which time it went into effect.

Preliminary to a particular consideration of Section 4404, and to obtain the proper perspective in construing it, it is deemed ad-

visible to consider the history and purpose of this and other related sections. The protection and promotion of public health intimately concerns the public welfare and to that end, at an early date, the state, in the exercise of its police power delegated some of its power to municipal corporations and townships, providing for the creation of municipal and township boards of health, which boards were a part of the municipal and township government, and to which in a large measure was committed the matter of local sanitation subject to certain powers reserved to the state through the instrumentality of the state board of health.

As stated by the Supreme Court in Board of Health against Greenville, 86 O. S., 25:

"In granting to a municipality certain powers to be exercised for the benefit of the public health of that municipality, the state has not relinquished its authority and control of this important particular over any of the territory comprised within the limits of the state. *** The health of the inhabitants of the city is still a matter of concern to the state and of such vital concern that the general assembly has not thought proper to commit it exclusively to the control and discretion of men who may or may not have any particular ability or experience in sanitary affairs."

At the risk of digression, this opinion may be further quoted as indicating that the changed social and business conditions referred to later have been noted by the courts:

"Cities are no longer enclosed by stone walls and separate and apart from the balance of the state. The sanitary condition existing in any one city of the state is of vast importance to all the people of the state, for if any one city is permitted or maintain unsanitary conditions that will breed contagious and infectious diseases, its business and social relations with all other parts of the state will necessarily expose other citizens to the same diseases."

Section 4404, since the adoption of the municipal code, is found in Chapter 2, relating to municipal boards of health, and, prior to the enactment of the Hughes law, read as follows:

"The council of each municipality shall establish a board of health, composed of five members to be appointed by the mayor and composed by council who shall serve without compensation and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. But in villages the council, if it deems advisable, may appoint a health officer, to be approved by the state board of health, who shall act instead of a board of health and fix his salary and term of

office. Such appointee shall have the powers and perform the duties granted to or imposed upon boards of health, except that rules, regulations or orders of a general character and required to be published, made by such health officer, shall be approved by the state board of health."

It may be noted here that the council is authorized and directed to establish a municipal board of health. It is common knowledge that in many municipalities, with the increase and congestion of city population, the matter of sanitation was neglected, and under the strain of unusual epidemics, the health administration was inefficient and from time to time additional statutes were enacted to secure greater efficiency in such matters, as pointed out in the Greenville case, above referred to.

Examples of this are found in Sections 4406 and 1249 et seq., 4406 provided that if the council failed for sixty days to establish such board of health, the state board could step in and appoint a health officer. Section 1249 et seq. provide for action on the part of the state board with reference to the improvement and extension of water works in certain cases where the municipal board of health refuses or fails to act.

In 1912 the municipal home rule amendment was adopted as Sections 1 to 14 of Article 18. Section 3 of that article is as follows:

"Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

In the case of *State ex rel Toledo v. Lynch*, 8 O. S., 344, 345, the court holds that the determination of which officer shall administer the government of a municipality and which one shall be appointed and which elected, is local and municipal in character. In this case the court quoted with approval the holding in the case of *State ex rel Duniway v. City of Portland*, 133 Pac. Rep., 62, where it is said:

"Municipal elections and the choice of to municipal officers are matters of purely municipal concern, and, as to these, the people of the city have ample power to legislate, subject only to the restrictions heretofore noted."

No amendment of Section 4404 was made after the adoption of the home rule amendment until the acts now under consideration, and it may be questioned if the effect of this adoption was probably that Section 4404 was no longer operative where charter cities

created other agencies, performing the functions of a municipal health board. In view of the holding of the court in the Greenville case, as to the character of the function of the state board of health under modern conditions, it may be questionable if in all its phases the sanitation of a municipality can be said to be entirely local. However, it is deemed unnecessary to further discuss or finally decide this question.

The Hughes act was intended as a comprehensive health code, introducing some new features in health administration and making radical changes in the former laws; the state no longer dealt with municipalities, as such, directly, but created municipal health districts whose boundary lines were the same as the municipalities. This is evidenced by the first sentence of Section 1261-16, which shows the division of the state and the purposes for the division, in this language:

"For the purposes of local health administration, the state shall be divided into health districts."

All cities having a population of 25,000 or over constituted municipal health districts, while the municipalities and townships outside such municipal health district constituted a general health district for each county. Provision was made, however, for municipalities between ten and twenty-five thousand population becoming a separate health district, when in the opinion of the state department of health it is

"furnishing *** a sanitary administration equal to that to be provided in the district under the provisions of this act."

Provision was also made for the union of a municipal health district and a general health district into a joint district, subject to the approval of the state commissioner of health of the working agreement for health administration in such joint district. After such union the board of health of the municipal health district within the combined area was to perform all the duties required of a general health district board of health. So that under this provision, in case of such union, the territorial jurisdiction of the municipal health district board was increased.

It is thus apparent that all cities were not affected alike by this act. The board of health established in old Section 4404 was a municipal board, while the board created and to be established by the Hughes act, was a municipal health district board. In the division of the state for health purposes, the district was made the unit and city and county lines were adopted for its territorial definition.

What might be termed a new quasi-political subdivision was created somewhat analogous to school districts, or, so far as a city of the required population was concerned, it might be said that it then had a dual interlocking capacity. It constituted a municipal health district and its city council was empowered to establish a municipal health district board of health, while the duty and method of raising the necessary funds for this health district was not changed by the act, showing the interdependent character of the district and the municipality. The idea of separate identity is further indicated by the fact that by Section 1261-38 the treasurer and auditor of the city are specifically designated as the treasurer and auditor of the health district.

Section 4404, as contained in the Hughes act, reads:

"The council of each municipality constituting a municipal health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council who shall serve without compensation and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

It must be noted here that the subject of the first sentence of this section is changed from "the council of each municipality," as it was before, to "the council of each municipality constituting a municipal health district," but the rest of the statute is the same excepting the provision for charter municipalities making different provisions for health administration. Original Section 4404 was repealed and there was no saving clause with reference to existing municipal boards of health. The effect of the repeal of a statute, in the absence of constitutional limitations or saving provisions, is, as stated in 36 Cyc., 1234, "as if it had never existed and of putting an end to all proceedings under it." However, where the effect is practically that of amending the original section repealed, the matter of the old statute carried into the new statute suffers no break in its continuity, so there is no magic in the name which the legislature may give to the new act, whether it is termed an amendment or repeal that will defeat an otherwise evident intention. The question then is, was it the intention to abolish the municipal boards of health? Technically it would seem that such was the intention. The new board is not a municipal board, but a municipal district

board. There can now be no such body known as the municipal board of health.

That a distinction between the district board of health and the old municipal board of health existed in the legislative mind, is evidenced by this language in Section 1261-15:

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality."

The language used here, "the district board hereby created," to distinguish from the old board, cannot be overlooked, nor is this all; it continues "and all such powers, duties, procedures * * * shall be construed to have been transferred to the district board of health by this act." Here is a distinction not merely in name, but a transferring from and divesting of the old board of all its powers and duties. Nor can it be said that the old board was appointed by a municipality constituting a municipal health district, for at the time of their appointment it was not such a municipality because it did not and then could not constitute such a district. It should be noted, however, that the appointing power, the duties and qualification of the board, so far as this section goes, are the same. It must be remembered also that in this new scheme of health administration old Section 4404, as it stood originally, had to be materially changed because of the classification of cities and to conform with the home rule amendment provisions.

Leaving Section 4404 for the present, other sections of the act may be considered. Section 4405 had provided for the state to appoint a health officer if the city council failed to appoint a board of health. This provision is carried into the new act in this language:

"If any such municipality fails or refuses to establish a board of health."

Here the reference is to "such municipality," that is, a municipality constituting a municipal health district, as provided in the preceding section. It is suggested that the words "constituting such district" mean such a municipality constituting such a district at the time the act went into effect.

Some idea of the prospective operation of the organization part of the new act is shown in reference to organization of municipal health districts in Section 1261-39 in this language:

"When any general or municipal health districts have been duly organized as provided by this act."

Other changes may be pointed out and, roughly grouped under two heads:

1. The increase of state control, and
2. Additional powers conferred on district boards.

Under the first head we have:

(a) The power of the state commissioner of health initiate charges against the members of "the board of health of a *** municipal health district" and power given the public health council to remove members of such board. See section 1261-25.

(b) The state commissioner of health must approve the contract for joint health administration in cases of union, as provided in section 1261-20.

(c) The contract for furnishing laboratory service to a district board of health by section 1261-27 must be approved by the state commissioner of health.

(d) By section 1261-28 the district board must use due diligence in carrying out the orders and regulations of the state department of health in connection with the quarantine and prevention of the diseases therein referred to.

(e) Section 24 provides for a subsidy from the state to the district in an amount equal to one-half the amount paid by the district board of health for certain purposes. This subsidy is entirely contingent upon the approval of the state commissioner of health.

(f) In section 1261-43 the state department of health is authorized to provide for annual conferences of districts health commissioners and to compel their attendance at a school of instruction to be conducted by the state department of health at Columbus, at the expense of the health district.

Under the second head we have:

(a) Increased power and authority granted by section 1261-26, whereby it is made the duty of each district board of health "to study and record the prevalence of disease within its district: *** to provide for the medical and dental supervision of school children ***, to provide for the inspection of schools, public institutions *** correctional and penal institutions *** hotels and other places where food is manufactured *** sold or offered for sale, and for the medical inspection or persons employed therein."

(b) In section 1261-27 provision is made for carrying on of laboratory work.

(c) In section 1261-28 authority is given for providing for the free treatment of certain diseases and the establishment and maintenance of clinics for such purpose.

(d) Section 1261-33 authorizes the district board to establish detention hospitals for cases of communicable diseases and to provide for the support and maintenance thereof.

(e) Provision is made in section 1261-29 for the free distribution of antitoxin for the treatment of diphtheria and for the establishment of sufficient distributing stations to render such antitoxin readily available in all parts of the district."

Without quoting further from this act, it is deemed sufficient to state that the accumulated effect of the changes referred to lead to the belief that it was the intention in this act to make radical changes in the health administration of the state and that municipal health boards were abolished and municipal health district boards created in their place.

In the Griswold act the Hughes act was amended as to classification of cities and in other minor matters. The Griswold act was passed as an emergency, the emergency being stated in Section 4 of the act to exist "by reason of the fact that under a recent decision of the Supreme Court of the state the present health laws of this state are probably in conflict with the constitution, and further by the fact that existing sanitary laws cannot be enforced by reason of the financial situation in many taxing districts and the public health will be endangered by failure to provide immediately a system of health protection."

However, despite the legislative expression that the Hughes act was probably unconstitutional, it must be remembered that until a law is judicially determined and declared to be unconstitutional, it stands as a valid law.

Probability falls short of the degree of certainty as to the unconstitutionality of the law that is required, as stated by the supreme court in *Miami County v. Dayton*, 92 O. S., 216:

"Before a court is warranted in declaring a legislative act unconstitutional, it must clearly appear that the statute is obviously repugnant and irreconcilable with some specific provision of provisions of the constitution. If there be a reasonable doubt as to such conflict, the statute must be upheld."

Section 4404 in this last act reads:

"The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

While as pointed out the legislative expression as to the probable uncertainty of the Hughes act is not conclusive on that question, but is to be considered merely as a statement of the emergency, yet it should also be borne in mind that the essential features of the Hughes act, above pointed out, are in the main carried into the Griswold act and the decision of the supreme court, referred to in the emergency clause, viz., the city of Elyria v. Vandemark, Case No. 16301, decided September 9, 1919, bearing entirely on the effect of classification of cities by population of the uniform operation of law provision in the constitution, shows that one of the purposes, if not the main purpose, was to amend the Hughes law in this particular, viz., that no classification of cities was attempted. However, it does appear clear that while the infirmities of the Hughes act were considered, there was no disposition to abandon the principal ideas of the Hughes bill and restore the old municipal health boards.

Considering the history, character and purpose of these last two acts, and after careful examination of all of their sections, the conclusion is reached that their effect was to abolish municipal health boards and in place thereof to create and have established district health boards.

It is noted that the further question is asked as to the status of the appointees under the old boards, but it is believed that in view of the necessity for an early determination of the question already discussed, this question may properly be made the subject of a separate opinion.

Under Section 3016, General Code, No Costs Are Payable to the Judge of the Municipal Court from the County Treasury in Felony Cases Where There is No Conviction but Recognizances Are Forfeited and Collected.

(Opinion 972—Dated January 29, 1920)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your recent request for the opinion of this department on the question submitted to you by Hon. W. S. Ruff, Prosecuting Attorney of Stark County, as follows:

"I wish that you would give me a ruling with reference to the payment of costs of preliminary hearings in criminal cases heard in the municipal court of the city of Alliance.

Section 3016 and following sections do not include municipal courts. We have a municipal court in the city of Alli-

ance and another is to be established January 1st in the city of Massillon. I have been in doubt as to whether I had the right to allow the county to pay to the municipal court the costs in preliminary hearings. I trust that you will find it convenient to give me a ruling at an early date."

Your inquiry does not state whether it is "costs" under section 3016 or an allowance "in place of fees" under Section 3019 which is involved. Mr. Ruff's letter refers to the matter as "costs in preliminary hearings," but it also refers to "Section 3016 and following sections." So that it becomes necessary to consider the question with reference to both of these sections.

Sections 1479-195 et seq. (Alliance municipal court act), Sections 3016 et seq., and Section 4581, G. C., are pertinent.

The Alliance municipal court act is found in 107 O. L., p. 660. Section 2 of that act relates to the election, term, salary and qualification of the judge of the municipal court. It is noted that the judge's salary is payable from four sources, viz., from the municipal treasury, Lexington township, Washington township and the city of Alliance.

Section 3 of the act confers upon this court "the same jurisdiction in criminal matters and prosecutions for misdemeanors for violations of ordinances as mayors of cities and any justices of the peace."

Section 3 of the act also confers the same jurisdiction on the municipal court which the police courts now or may hereafter have.

Section 4 of the act gives such judge power to "summon and impanel jurors, tax costs; * * * and may exercise all powers which are now or may hereafter be conferred upon police courts or are necessary for the exercise of the jurisdiction herein conferred and for the enforcement of the judgments and orders of the court."

In Section 27 the powers and duties of the clerk such court are defined. In part it provides that he

"shall receive and collect all costs * * * and pay the same quarterly to the treasurer of the city of Alliance and take his receipt therefor, * * * and shall on the first Monday of each term of court make to the city auditor a report of all receipts and disbursements for the preceding term."

Section 31 of the act in part provides:

"In criminal cases all fees and costs shall be the same as fixed with respect to police courts."

Without quoting further from this act, it is to be noted that it is not a law of a general nature; that a part of the judge's salary is paid by Stark county; that the municipal court is the successor to the police and justice of the peace courts and that all fines and costs are to be paid to the city treasurer, no part thereof being paid into the county treasury.

Section 3016 provides that:

"In felonies, when the defendant is convicted the costs of the justice of the peace, police judge, or justice, mayor, marshal, chief of police, constable and witnesses, shall be paid from the county treasury and inserted in the judgment of conviction, so that such costs may be paid to the county from the state treasury. In all cases, when recognizances are taken, forfeited and collected and no conviction is had, such costs shall be paid from the county treasury."

It is to be noted that in this section the municipal court is not provided for or mentioned in express terms and that the cases therein referred to are felonies in which there have been convictions, and in all other cases, in which there is no conviction but in which recognizance has been forfeited and collected, so that the state is not put to expense for such costs.

Section 3018 provides that in felonies the witness fees shall be paid notwithstanding the state fails to convict.

Section 3019 provides:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at any regular session, may make an allowance to any such officers in place of fees, but in any year the aggregate allowances to such officer shall not exceed the fees legally taxed to him in such causes, nor in any year shall the aggregate amount allowed an officer exceed one hundred dollars."

It is to be noted here that the cases in which such allowance may be made are felonies where the state fails, and misdemeanors wherein the defendant proves insolvent, and that the provision here is for "an allowance * * * in place of fees to such officer."

Of course, it is to be borne in mind that theoretically the officers referred to will collect their fees from the prosecuting witness in cases where conviction is not had and from the defendant in the misdemeanors referred to, but the legislature undoubtedly was aware of the fact that a number of cases, in the course of the year, are brought before such courts in which it is impractical, if not im-

possible, to collect such fees, and having provided in Section 3016 for the payment of costs in certain cases where the county is re-im-bursed, and followed this with the prohibition of Section 3017 that "in no other case shall any cost be paid" to such officer, the legisla-ture by Section 3019 intended to provide some compensation for the officers "in place of fees," which were taxable but not collectible in such cases. In Section 3019, as in the sections immediately preced-ing it, there is of course no express reference to the municipal court.

In *Commissioners (Butler County) v. State ex rel. Primmer*, 93 O. S., 42, a case involving a question somewhat similar to the one here presented was decided. The defendant Primmer was the city solicitor of Hamilton, Butler county, and filed his petition in the Court of Common Pleas of that county, praying for a writ of mandamus against the county commissioners requiring them to allow and fix his compensation for services as prosecuting attorney in the municipal court of Hamilton and to command the county auditor to issue his warrant for said services.

A demurrer to the petition was sustained in the Common Pleas Court and it reached the Supreme Court on the question of whether the city solicitor could recover for services performed as police prosecutor in the municipal court of Hamilton under Section 4307, which provided that the city solicitor should designate one of his assistants to act as prosecuting attorney of the police or mayor's court and should receive for this service such compensation as coun-cil may prescribe, and "such additional compensation as the county commissioners shall allow." The city solicitor contended that after the enactment of the Hamilton municipal court act, by which the police court of Hamilton was succeeded by the municipal court and in which municipal court act it provided (Section 1579-142, G. C.), that the city solicitor should be the prosecuting attorney of the municipal court, he was entitled to such compensation as though municipal courts were named in Section 4307.

The commissioners defended on the ground that Section 4309 did not authorize the allowance of additional compensation for serv-ices performed in the municipal court, as that court was not named or referred to in Section 4307, nor was there any other section of the statutes relating to the county commissioners' power and duties which authorized them to fix and allow additional compensation.

The court in a per curium opinion points out, at pages 44 and 45:

"It is claimed, however, that there is no provision here for compensation from the board of county commissioners and failing to mention the same, although mentioning his allowance from the council in city cases, the presumption arises that this was intended as exclusive and that he should, therefore, receive no compensation from the county. However, his allowance of compensation from the county is fixed by the general section heretofore quoted, 4307, supra, and if the special act is to control as to compensation it should have expressly provided that such compensation should be in full for all services rendered, or used other apt words excepting it from the operation of the general statute."

The court in the concluding paragraph reasons thus:

"This being a state statute, providing for compensation for services rendered to the state, it should be so construed as to have uniform operation as far as practicable throughout the state. Such construction should be given the special act as to the city of Hamilton as to conform to the general purpose of the general act and allow equal compensation for equal service throughout the state."

In this connection it should be borne in mind that Section 4307 defines the duties of a municipal officer and is a law of a general nature, the validity of which requires uniform operation throughout the state, and that in the creation of the Hamilton municipal court act no change was made in any way with reference to the duties or the compensation of the city solicitor, whose office was not created in the municipal court act, but, as pointed out, was the subject of general legislation. There was no provision in the municipal court act then for any part of his salary to be paid by the county, though that subdivision of the state received the benefit of his services in state cases.

But can it be said that this case is parallel to that which may be supposed to arise on the facts as presented here? The following facts distinguish such a case from the Hamilton case:

1. The Alliance municipal court act is not a law of a general nature, such acts being special and in theory at least adapted to the needs and wishes of each locality where created, whereas Section 4307 is a general law. This distinguishes the present question from the Hamilton case and the court's reasoning on the desirability and necessity of uniform operation throughout the state is inapplicable, as municipal court acts may differ very greatly and uniform operation would be impossible and probably undesirable.

2. Under Section 4307, in the Hamilton case, the court was dealing with the matter of compensation from the county for services performed directly in its behalf, viz., legal services as police prosecutor in state cases in police or mayor's courts. The state could have cast this duty upon the county prosecuting attorney with or without additional compensation, to be paid him from the county treasury, but it chose to provide by this section that for such services as police court prosecutor, the city solicitor should receive "such additional compensation as the county commissioners shall allow."

3. The subject of this provision is direct compensation from the county for services of a salaried officer who is not authorized as such to charge fees and which fees are not chargeable in the first instance as part of the costs.

In Section 3019 some of the judicial officers there named doubtless receive their compensation, in whole or in part, in fees collected from the litigants and its purpose is manifestly to make up to such officers an allowance "in place of fees" for such cases where the fees are not so collected. This is consistent with Section 3017, prohibiting the payment of any costs to such officers from the county treasury, except as provided in Section 3016.

In the Alliance act it is specifically provided that a part of the salary of the judge shall be paid by the county, indicating (if the questionable similarity of Section 3019 to 4307 is for the present assumed) that the legislature in the Alliance act have used "apt words excepting it from the operation of the general statute" as stated in the Hamilton case. In this connection Section 27 of the act, supra, may be recalled, which provides that all fines and costs collected shall be paid into the city treasury, while under Section 4599 police court fines in state cases are payable to the county.

It is believed that these essential differences prevent the application of the principle announced in the Hamilton case and that so far as the allowance to the judge of the municipal court under Section 3019 is concerned, it is the opinion of the attorney general that the judge of the municipal court of Alliance is not entitled to an allowance by the county commissioners in place of fees in felonies where the state fails or in misdemeanors where the defendant proves insolvent.

But as to the payment of costs under Section 3016, a somewhat different situation exists. Here the county collects such costs from the state when the convicted felon is delivered into the state's custody, and in the other cases where there is no conviction, but in

which a recognizance is forfeited and collected, the county collects from the signer of the recognizance. In either case the costs are not ultimately borne by the county but are in effect collected from the state, the accused or his bondsman. If the costs are legally taxed in the first instance, it would seem to follow that the county could disburse the costs so collected to the persons entitled thereto.

On this phase of the question, under Section 3016 there would be more plausibility for insisting upon the application of the Hamilton case, as the question of the relative benefit received or burden sustained by the county from the creation and maintenance of the municipal court would not be present, as the county in paying these costs under this section is not paying from its own funds, as already pointed out.

Are municipal court costs legally taxable in criminal cases? Section 31 of the Alliance act (*supra*), fixes the fees in criminal cases as those fixed "with reference to police courts." Section 4580, relating to police courts, provides for the payment of witness fees in such courts. That part of Section 4581 which is pertinent is "other fees in the police court shall be the same in state cases as are allowed in the probate court or before justices of the peace in like cases."

At this point it may be pointed out that the fees allowed in the probate court and in the justice court are fixed by different statutes and are not the same.

In the case of *Haserodt vs. State ex rel.* 6 O. A. R., 354, the city of Cleveland brought an action to compel the county auditor and treasurer to pay to the city treasurer certain costs which had accrued to the chief of police in criminal cases in the police court of that city. By cross-petition the chief of police and trustees of the police relief fund also claimed the costs. The trustees claimed by virtue of an agreement among members of the police department, so that their claim was based upon the right of the chief of police to such costs. The chief's claim, as shown in the statement of the case at page 356, was:

"That he was entitled to said costs under the provisions of Sections 3016 and 4581 General Code, and relies upon these sections as authority for fixing and allowing fees to a chief of police for services in a police court."

The city claimed under Section 4213, which provides that "all fees pertaining to any office shall be paid into the city treasury." Section 36 of the Cleveland municipal court act (now 1579-40.

G. C.), relating to fees in criminal cases in the municipal court, was identical to Section 31 of the Alliance act.

The court disposed of the city's claims summarily on the authority of *Portsmouth vs. Milstead et al.*, 8 C. C. (n. s.), page 11, as Section 4213 was held in that case, which was affirmed without report in full in 76 O. S., 597, not to apply to fees earned in state cases, but applicable only to fees in prosecutions under city ordinances.

The court also considered the case of *Delaware vs. Matthews*, 13 C. C. (n. s.), 539, and concluded that the observation of the court in that case, which was somewhat at variance with the conclusion of the Cleveland Court of Appeals, was mere dictum. The case of *State ex rel. vs. Kleinhoffer*, 92 O. S., 163, was also considered, and after quoting from this case the court of appeals held:

"We think this language of the court is equivalent to a holding that if the section there under consideration could be construed as providing that humane officers should receive the same fees as a sheriff or constable for like services, it would be inoperative because of its indefiniteness."

In the next paragraph the Supreme Court's reasoning is applied to Section 4581, with the result that the court concluded:

"Now the provisions of Section 4581, aforesaid, present precisely this situation, for the most that may be claimed for this section as authority for fixing and allowance of fees to a chief of police is that it provides that such fees shall be the same as those of a sheriff or constable in the probate court or before a justice of the peace. We regard the reasoning of the court in the case last cited as conclusive against any claim that said Section 4581 is effective in furnishing statutory authority for the fixing of fees in state criminal cases in a police court to the chief of police for services rendered therein."

This application is based on the fact, as pointed out more explicitly on pages 357 and 358, that the fees in the probate court and the justice court are not the same and that the statute in this regard is fatally defective.

Again, on page 362, the court states unqualifiedly:

"There is no statute fixing the fees in a police court of any police officer in state criminal cases."

As to Section 3016, the court pointed out at page 360 that its provisions

“do not furnish such authority, for its provisions are intended only to authorize the payment of such fees from the county treasury and imply that under some other statute may be found the authority for fixing said fees.”

While the question is not entirely free from doubt, this decision of the Cleveland Court of Appeals is rendered under statutes and on facts similar to those presented here, and was decided after the Hamilton case in 92 O. S. (supra), and in the absence of any later judicial construction overruling or modifying that holding, it is the opinion of the attorney general that:

Under Section 3016 no costs are payable to the judge of the municipal court from the county treasury in felonies where the defendant is convicted or in other cases where there is no conviction but recognizances are forfeited and collected.

✱

The Language “Publicly Owned and Operated Motor Vehicles Used Exclusively for Public Purposes” as Found in Section 6295, General Code, Relates to Motor Vehicles Owned by the Nation, State or Any of Their Legally Constituted Subdivisions. Therefore, Such Vehicles Owned by Town, Village or Township School Boards for Transportation of Pupils Are Exempted from the Payment of the Automobile Tax.—A Motor Vehicle Used by a Postoffice employe, Whether Rented by Him or Owned and Operated by Him Under an Allowance From Said Postoffice Department, is not Subject to the State Tax When Used Exclusively in Connection With the Business of the Postoffice Department. On the Other Hand, a Motor Vehicle, Rented or Operated Under a Departmental Allowance, is Subject to the State Tax if Used by Said Employe a Part of the Time for Private Business or Pleasure.—However, the Exemption of Certain Owners From Payment of the Automobile Tax Does not Exempt Such Owners from the Operation of Said Law Relative to the Registering of Said Vehicles.

(Opinion 962—Dated January 24, 1920)

Hon. Harvey C. Smith, Secretary of State, Columbus, Ohio.

Dear Sir: Acknowledgment is made of the receipt of the request of the Registrar of Automobiles for the opinion of this department, as follows:

"Please furnish this department with an opinion as to the limitation to be exercised by the Secretary of State in functioning the Automobile Tax Law, House Bill 573, amending several, and enacting supplemental sections 6309-1 and 2, 12618-1-2-3 and 4, General Code, in the following instances:

1. Shall vehicles owned and used by town, village or township school boards for transporting pupils to centralized schools be exempted from payment of the automobile tax (section 6295, General Code.)

2. Shall motor vehicles privately owned and used by carriers of government mail and freight be exempted as noted in the enclosed ruling by the United States Post Office Department. See 6295 General Code.)

The enclosure to which you refer as being a "ruling by the United States postoffice department" is as follows:

"The Post Office Department has rendered a ruling to the effect that it will not be necessary for letter carriers assigned to drive motor cycles, or letter carriers who drive rented machines or who use their own machines under a departmental allowance in connection with the delivery of mail matter, to procure a license. The department's decision is based on the view that the state is without power to tax or burden in any way the means properly employed by the United States government in carrying into effect any of its constitutional powers. The establishment of postoffices and the collection and distribution of mail in all of its branches is expressly provided for by the constitution of the United States.

In *McCulloh vs. Maryland*, 4 Wheaton, page 430, the Supreme Court speaking through Chief Justice Marshall, said:

'A state is without power to tax or burden in any way the means employed by the United States government for the execution of its powers.'

And again at page 436:

'States have no power by taxation or otherwise to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.'

'These principles have been reaffirmed and redeclared in a number of subsequent decisions of that court.'

In the light of the foregoing, the department holds, it is apparent that if a state required the government to purchase license tags it would in effect place a burden or tax on the means employed by the postoffice department to transport mail, and therefore the action would be in conflict with the Government's rights under the constitution as interpreted by the Supreme Court."

The parts of House Bill No. 573, to which you refer, pertinent to your inquiries, are as follows:

"Sec. 6290. As used in this chapter and in the penal laws, except as otherwise provided :

(1) 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power and not operated exclusively upon rails or tracks, except road rollers, traction engines, tractors, trailers designed to be drawn by animal power and used principally for agricultural purposes, public ambulances, and vehicles belonging to any public department, municipal fire department, volunteer fire company or salvage company organized under the laws of Ohio, or used by such department or company in the discharge of its functions.

* * * * *

(5) 'Owner' includes any person, firm or corporation having title to a motor vehicle or the exclusive right to the use thereof for a period of greater than thirty days, other than a manufacturer or dealer."

"Sec. 6295. Every owner of a motor vehicle before operating or driving such motor vehicle upon the public roads or highways of this state, or permitting the same to be driven, shall file a like application. On all applications required by this section the taxes payable shall be as follows :

* * * * *

Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto. The secretary of state shall accept any application to register a motor vehicle owned by the Federal government which may be made by any officer, department or agent of such government."

The consideration of your first inquiry involves the question as to what is meant by the use of the words "publicly owned and operated motor vehicles used exclusively for public purposes" in the statute above quoted. While there are a multitude of definitions as given by the courts and lexicographers for the word "public," it is believed that Webster's Dictionary clearly defines the same, when used as an adjective, in the following language, which definition is applicable to the case at hand :

"pertaining to, or belonging to the people; relating to a nation, people or community; opposite to private."

Therefore, this clause must mean that motor vehicles owned by the people should not be required to pay the license tax provided. Theoretically speaking, under our form of government the people make all laws and their rights are superior to that of every other

authority. However, the people can only operate through the agencies of government which they have established. It is believed that the language "publicly owned and operated motor vehicles used exclusively for public purposes" relates to motor vehicles owned by the nation, state or any of their legally constituted subdivisions. It would therefore seem that your first inquiry must be answered in the affirmative.

In considering your second inquiry, it seems clear that the legislature exempted, in Section 6295 supra, from a charge all motor vehicles owned by the federal government. Therefore it is not essential to discuss herein the proposition as to whether or not a state may legally require a federal agency to pay a license tax.

It will further be observed that a motor vehicle owned by a private person but exclusively operated and controlled by the federal government is in the same status in so far as this regulation is concerned as if said motor vehicle were actually owned by said government, and an agent of said postoffice department using a rented motor vehicle, or his own under a departmental allowance, exclusively for the government business, will not be subject to the tax. However, this will not be true where said motor vehicle is used by the owner for a part of the time for business other than governmental or for pleasure. Such a motor vehicle would have a dual character. When being used in the government business it will be exempt from the tax; on the other hand, just the minute it is used for any other purpose aside from a strictly and exclusively governmental use, it has in all respects the same status as a privately owned and operated motor vehicle in so far as a license tax is concerned.

While the above quoted purported ruling of the United States postoffice department provides,

"it will not be necessary for letter carriers assigned to drive motorcycles, or letter carriers who drive rented machines or who use their own machines under a department allowance in connection with the delivery of mail matter, to procure a license."

it is not believed that said department in using this language said or intended to say that the private owner of a motor vehicle would not be subject to the state license tax when said motor vehicle was used for private business or pleasure a part of the time.

In specific answer to your second inquiry, you are advised that a motor vehicle used by a postoffice employe, whether rented by him or owned and operated by him under an allowance from said

postoffice department, is not subject to the state tax when used exclusively in connection with the business of the postoffice department. On the other hand, a motor vehicle, rented or operated under a departmental allowance, is subject to the state tax if used by said employe a part of the time for private business or pleasure.

It may be noted in this connection that the provisions of the law, therefore referred to, exempting owners of certain motor vehicles from the payment of the license tax, does not exempt such owners from the operation of said law relative to the registering of said vehicles.

A Motor Vehicle Propelled by Internal Combustion, the Horse Power of Which Computed by the Formula Provided in Section 6923, General Code, Exceeds Twenty-five if Only by a Fractional Part, is More Than Twenty-five, and subject to the Twelve Dollar Tax Within the Meaning of Section 6292, General Code.

(Opinion 970—Dated January 29, 1920)

Hon. Harvey C. Smith, Secretary of State, Columbus, Ohio.

Dear Sir: Receipt is acknowledged of the request by the State Registrar of Automobiles for the opinion of this department as follows:

"Please render an opinion on the following, which is relative to the new automobile law and is a question of the fee required for registration, according to the horse power.

The law reads, vehicles up to 25 horse power shall be taxed \$8.00; from 25 to 35 \$12.00; above 35, \$20.00. See section 6292, House Bill No. 573, an Act amending the General Code.

Section 6293 gives a formula for determining the horse power, which is to square the diameter of the cylinder, measured in inches, multiplied by the number of cylinders, and divided by $2\frac{1}{2}$. Example: A four cylinder car with 4 in. cylinder bore, figures 25.60 horse power. A six cylinder car with $3\frac{1}{4}$ in. cylinder bore, rates 25.35 horse power, according to the above formula.

The question is, shall such cars come under the head of 25 horse power, with a fee of \$8.00, or shall they be classed between 25 and 35 horse power with a fee of \$12.00?"

Section 6292 General Code as amended in House Bill No. 573, which said act was filed with the Secretary of State January 2, 1920, is as follows:

"Each owner of a motor vehicle shall pay or cause to be paid taxes as follows

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horse-power, twelve dollars; for each such car having more than thirty-five horse power, twenty dollars.

For each commercial car the same tax based on horse power, and in the same classifications as are herein provided for passenger cars, and in addition thereto twenty cents for each one hundred pounds gross weight of vehicle and load, or fractional part thereof.

For each trailer, the same tax based on gross weight of vehicle and load, herein provided for commercial cars.

The minimum tax for any vehicle having motive power other than a motor bicycle or a motorcycle shall be eight dollars; and for each trailer, two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state."

Section 6293 as amended in said bill, contains the following which pertains to your inquiry:

"The horse power of all vehicle propelled by internal combustion engines shall be computed upon the following formula: Square the diameter of the cylinder measured in inches, multiply by the number of cylinders and divide by two and one-half. For all motor vehicles propelled by steam engines the rating of the horse power thereof shall be based on the system of rating adopted by the United States government.

For all motor vehicles propelled by electricity the rating of the horse power thereof shall be the normal horse power of the electric motor therein, to be ascertained by the secretary of state."

It is assumed that your inquiry relates to motor vehicles or cars propelled by internal combustion engines as distinguished from motor vehicles by steam engines or electricity.

The formula specified, which must be used in the computation of the horse-power of this class of motor vehicles, is definite and certain. It leaves no room for speculation, but provides for the determination of the horse-power of such vehicle to a mathematical certainty. A horse-power is the theoretical unit by which the capabilities of engines are measured with reference to the lifting power. This unit and the method of its computation may vary in some degree as used by different mechanical engineers in reference to combustion engines, which undoubtedly accounts for the explicit method provided by the legislature for the computation of said horse-power.

In the act from which the above statutes are quoted, the legislature in providing for a graduated tax for motor vehicles were confronted with the task of establishing a line of division between the classes designated to pay a tax of eight and twelve dollars respectively. This line was established with reference to the capabilities for lifting power of the engines of said motor vehicles as scientifically understood. It is believed that the language used "for each passenger car having twenty-five horse-power or less," and the further language "for each such car having more than twenty-five" was used with the same technical and specific meaning as the language used in the following section which definitely fixes the method of computation. It will readily be observed that the fractional part of the horse-power is capable of functioning in conjunction with the other full units of power, thereby contributing its proportionate part of said lifting power; that is to say, all other things being equal, a motor vehicle, the horse-power of which figures any fractional part more than twenty-five, has more power than a vehicle, the horse-power of which figures exactly twenty-five. It therefore follows that in any instance where the horse-power of a motor vehicle figures twenty-five and a fraction, it is more than twenty-five within the meaning of said statute.

The following is quoted from the syllabus in the case of *Slingluff, et al. v. Weaver*, 66 O. S., 621:

"But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Practically the same rule was announced in *Brewing Co. v. Schultz*, 96 O. S., 27.

It is the opinion of this department that the language of the statute is clear and specific in its provisions that a motor vehicle propelled by internal combustion, the horse-power of which computed by the formula provided in Section 6293 General Code exceeds twenty-five if only by a fractional part, is more than twenty-five, and subject to the twelve dollar tax within the meaning of Section 6292 General Code.

SUPREME COURT

MOTION DOCKET

10353. *The Universal Machine Company v. The Ohio Northern Public Service Company.* Motion for an order directing the Court of Appeals of Wood county to certify its record. Overruled.

10361. *The Board of Commissioners of Green County, Ohio, v. J. F. Harshman.* Motion for an order directing the Court of Appeals of Green county to certify its record. Overruled.

10363. *The Paragon Cooperage Co. v. The H. Bettis Co.* Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Overruled.

10367. *Nicola Russito v. The Otis Steel Co.* Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10369. *Margaret L. Quinn v. Walter Davlin.* Motion for an order directing the Court of Appeals of Sandusky county to certify its record. Overruled.

10372. *The Toledo, Bowling Green & Southern Traction Co. v. James F. Gallagher, Admr.* Motion for an order directing the Court of Appeals of Wood county to certify its record. Overruled.

10373. *Joseph S. Faloon v. Harry Flory.* Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Overruled.

10375. *William Meeker et al. v. First Congregational of Disciples of Akron, Ohio, et al.* Motion for an order directing the Court of Appeals of Summit county to certify its record. Overruled.

10377. *Rose Mae Freeman v. Charles B. Freeman.* Motion for an order directing the Court of Appeals of Delaware county to certify its record. Overruled.

10378. *The City of Toledo et al. v. The Curtiston Improvement Co. et al.* Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

10379. *The Mutual Life Ins. Co. of New York v. Clara A. Long.* Motion for an order directing the Court of Appeals of Montgomery county to certify its record. Overruled.

10381. *The Ohio Locomotive Crane Co. v. Joseph L. Smith.* Motion for an order directing the Court of Appeals of Crawford county to certify its record. Overruled.

10383. *Harry B. Holmes v. Albert Joseph et al.* Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

10384. *Purrill Trepanier v. The T. & O. C. Ry. Co.* Motion for an order directing the Court of Appeals of Lucas county to certify its record. Sustained.

10387. *George Allison v. The State of Ohio.* Motion by plaintiff in error for leave to file petition in error to the Court of Appeals of Hamilton county. Overruled.

10389. *Vincent Domico v. The State of Ohio.* Motion by plaintiff in error for leave to file petition in error to the Court of Appeals of Summit county. Overruled.

10390. *Industrial Commission of Ohio v. Charles Glenn.* Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Sustained.

GENERAL DOCKET

16222. *The Industrial Commission of Ohio v. Blanche Davidson.* RICH- LAND. Judgment reversed.

16440. *The State of Ohio ex rel. Everett V. Spaulding v. A. E. Baldwin.* DELAWARE. Judgment reversed. Judgment for plaintiff in error.

SECRETARY OF STATE

NEW INCORPORATIONS

The Cleveland Building-Equipment Co., Cleveland, \$5000. G. P. Koelliker, T. R. Nolan, J. C. Armstrong, W. A. Hammand, R. Warner.

The West End Dry Cleaning Co., Cincinnati, \$25,000. S. S. Johnson, E. E. Gray, C. Redwood, W. H. Blackburn, R. L. Shields.

The John D. Prout Realty Co., Cincinnati, \$10,000. J. D. Prout, K. W. Prout, M. L. Prout, E. F. Krekeler, Joseph Krekeler.

The Cincinnati Lyric Theatre Co., Cincinnati, \$200,000. J. C. Herman, Ed. Ritchie, H. E. Ritchie, H. C. McLaughlin, Benton H. Orr.

The Ashton & Richter Co., Cincinnati, \$10,000. Frank Ashton, Hazel Ashton, George Ashton, R. S. Richter, Theo. Richter, I. Cress Richter.

The American Ukrainian National Co., Cleveland, \$50,000. P. Tarnavsky, Jos. Senczyna, S. Smith, Peter Pacula, M. Pelech, A. Jammetz.

The Auto Accessories Co., Hamilton, \$10,000. Ida Sohngen, D. G. Sohngen, R. C. Howell, L. C. Sohngen, G. P. Sohngen.

The General Asphalt Paving Co., Cleveland, \$50,000. S. F. Pace, G. A. Sarstedt, B. R. Smith, F. A. Starstedt, H. L. Fredrichs.

The Southern States Oil and Gas Co., Dayton, \$150,000. S. A. Propst, H. J. Osburn, M. J. Beeghly, W. E. Becher, Robert Blackburn.

The Twenty-Five Mortgage and Realty Co., Cleveland, \$10,000. A. E. Haiman, E. M. Chaloupka, E. F. Spurney, Stella Haiman, F. C. Russell.

The Summit Storage Battery Manufacturing Co., Cuyahoga Falls, \$50,000. J. H. Sherer, V. C. Fenton, L. G. Chellingworth, W. D. Peck, D. S. Dennis.

The Miller City Oil and Gas Co., Fostoria, \$25,000. Oscar Byerly, J. H. Witmore, O. W. Witmore, R. C. Byerly, W. F. Maurer.

The Reliance Building Co., Cleveland, \$330,000. W. F. Dutney, C. Hibeler, W. L. Keys, A. S. Hippard, J. H. Schick.

The Hance Manufacturing Co., Westerville, \$100,000. H. F. Hance, A. E. Handschy, R. E. Sturgis, D. C. Hance, W. B. Cockrell.

The Third Avenue Lumber and Supply Co., Columbus, \$50,000. W. A. Jackson, J. O. Gooding, J. G. Miles, O. H. Mosier, A. R. Martin.

The Monitor Coal and Coke Co., Columbus. A. H. Schory, M. J. Schory, G. I. Schultz, L. H. Recob, I. N. Gardner.

The Con F. Drees Manufacturing Co., Covington, \$25,000. Con F. Drees, R. N. Tucker, H. L. Reck, J. H. Drees, S. E. Holsinger.

The Arko Lumber Co., Portsmouth, \$250,000. J. T. Breed, P. E. Selb, G. M. Blair, R. B. McCorkle, Harry Ball.

The Union Service Co., Cleveland, \$100,000. William H. Marlatt, G. B. Folk, Frank H. Pelton, E. E. Miller, E. L. Chester.

The Oil Tire Co., Cincinnati, \$10,000. R. C. Heinzman, W. P. Sohn, M. E. Eiser, Charles Schmitt, Carl Schmitt.

The Rossmer Drug Co., Cleveland, \$10,000. M. Rosenfeld, Hyman Mervis, A. W. Seighon, I. Mervis, Anna Rosenfeld.

The Buckeye Drill and Lathe Co., Columbus, \$300,000. W. N. Hoppe, O. H. Gray, E. F. Westerhold, W. C. Wav, Leonard Dudley.

The Sebring Grocery Co., Sebring, \$10,000. H. J. McMaster, J. W. Cordingly, S. I. Morley, G. E. Clark, G. A. Stanford.

The Euclid Foundry Co., Euclid Village, \$100,000. C. Yanchar, J. Kubiese, Joe Pogrjc, Anton Tekaucich, J. Yanchar.

The Euclid Avenue Sheet Metal Co., Cleveland, \$10,000. H. M. Roberts, P. R. Brown, D. Modiselle, L. E. Rice, M. W. Trampenau.

The Fidelity Storage Co., Cleveland, \$10,000. F. E. Wendling, E. J. Rice, J. S. Thrasher, K. Lawrence, E. P. Moffatt.

The Brickman Stove Co., Cleveland, \$25,000. G. E. Brickman, A. J. Reitz, M. Brickman, Minnie Reitz, C. L. Brickman.

The H. H. Lynn Lumber Co., North Jackson, \$25,000. Fred H. Lynn, J. F. Gault, E. Lynn Gault, Alice E. Lynn, E. J. Lewis.

The Black River Oil and Gas Co., Cleveland, \$60,000. M. A. Kalozi, G. L. Okros, A. S. Kalozi, M. O. Okross, N. J. Brewer.

The Akron Freehold Co., Akron, \$110,000. A. T. Barnes, L. F. Murphy, J. Gadel, C. E. Remie, R. G. Thomas.

The Metropolitan Commercial Co., Cleveland, \$275,000. T. A. Williams, Frank J. Welsh, W. H. Cool, W. F. Hurt, Frankline Hawk.

The Dellinger Motor Sales Co., Piqua, \$25,000. C. M. Dellinger, Alice Murphey, J. Dellinger, S. C. Dellinger, L. E. Dellinger.

The K. and K. Plumbing Co., Cleveland, \$10,000. Abraham Kramer, M. Kravitz, A. Garber, Carrie Kramer, Sarah Kravitz.

The Leffel Baking Co., Springfield, \$5500. W. C. Leffel, Jr., E. G. Root, M. L. Tordt, H. F. Tordt, V. W. Wadsworth.

The Brandon Realty Co., Cincinnati, \$5000. C. H. Hoffmeiske, C. H. Lingo, Nathan Schiff, F. W. Rocket, C. F. Wendeln.

The Uncas Investment Co., Mt. Healthy, \$6000. J. D. Scott, A. E. Huber, C. E. Yerbes, E. C. Grant, S. K. Henshaw.

The D. T. Owen Co., Cleveland, \$1000. A. A. Stearns, E. E. Stearns, J. A. Chamberlain, C. H. Royon, J. C. Royon.

The A. Kohn & Sons Investment Co., Cleveland, \$10,000. D. Klossheim, M. E. Kelly, B. Brabeck, L. Leppla, K. D. Carter.

The Findlay Implement Co., Findlay, \$30,00. J. B. George, M. L. Jaqua, W. H. Hefferson, E. D. Brobst, H. R. Beamer.

The Zeus Electric Co., Cleveland, \$10,000. John Rein, L. J. Rieske, J. Hoek, Margaret Rieske, R. W. On.

The Superb Gas & Oil Co., Columbus, \$500,000. A. R. Goldblatt, Samuel Goldblatt, O. L. Cohen, M. G. Stephens, H. S. Kerr.

The Miller Farm and Greenhouse Co., Toledo, \$100,000. H. J. Miller, L. F. Miller, C. G. Miller, F. R. Miller, H. N. Miller.

The Akron Tire Co., Toledo, \$10,000. G. J. Lewis, A. L. DeShetler, G. A. Bolles, A. P. McKee, B. L. Wolfe.

The Sharp-Schurtz Co., Lancaster, \$40,000. C. L. Sharp, D. D. Schurtz, Leota Landerfelt, L. G. Silbaugh, E. A. Silbaugh.

The Mathee-Maish Sales Co., Cleveland, \$25,000. W. H. Mathee, J. E. Phillips, J. H. Maish, I. P. Mathee, Dorothy H. Maish.

The Chagrin Valley Electric Co., Chagrin Falls, \$175,000. C. F. Chapman, E. W. Kelsey, Jr., R. P. Whitehead, F. M. Cobourn, Charles Weirich.

The Farm Management and Improvement Co., Warren, \$50,000. George H. Fillius, C. W. Hart, L. B. Griffith, J. C. Cratsley, F. W. Stillwagon.

The Southern Theatre Operating Co., Columbus, \$10,000. E. D. Howard, H. Byer, D. Howard, F. Reynolds, F. M. Raymond.

The Brown-Mitchel Publishing Co., Blanchester, \$7500. C. J. Brown, A. C. Mitchell, P. E. Snyder, C. E. Bates, J. R. Ross.

The Lawrence Supply Co., Fairport, \$30,000. E. E. Lawrence, E. L. Rogers, J. W. Hilberg, Evan Thomas, E. E. Lawrence, Jr.

The Miles Avenue Realty Co., Cleveland, \$10,000. J. M. Andrus, C. I. Russo, Herman Eisele, William Rothernberg, C. Wiedel.

The Canton Holmes Co., Canton, \$100,000. D. T. Quinn, H. E. Black, A. B. Arbaugh, H. L. Alexander, G. M. Buchtel.

The Farm Sales Co., Warren, \$10,000. C. W. Hart, L. B. Griffith, J. C. Cratsley, F. W. Stillwagon, George P. Fillius.

The Mobilene Co., Cleveland, \$50,000. D. J. Dye, F. A. McCarthy, F. J. Gries, N. M. McCarthy, F. R. Dye.

The Cleveland-McKeesport Gas & Oil Co., Cleveland, \$100,000. R. B. Tennant, W. M. Tennant, H. J. Miller, C. H. Morgan, F. C. Klawon.

The Freehold Mortgage Co., Akron, \$1,000. A. T. Barnes, J. Gadel, L. F. Murphy, C. E. Remie, R. G. Thomas.

The Scjiff Co., Columbus, \$100,000. H. R. Tingley, H. B. Monnett, O. W. Newman, K. Henderson, L. S. Tingley.

Increases

The Norwood Novelty Co., Cincinnati, \$20,000 to \$300,000.

The Commercial Poster Co., Cleveland, \$50,000 to \$100,000.

The Queen City Confection Co., Cincinnati, \$10,000 to \$25,000.

The Central Realty Co., Youngstown, \$125,000 to \$175,000.

The American Envelope Co., West Carrollton, \$300,000 to \$500,000.

The Celina Implement Co., Celina, \$10,000 to \$35,000.

The Inter Valley Building & Loan Association, Elmwood Place, \$500,000 to \$3,000,000.

The Economy Motor Co., Tiffin, \$150,000 to \$250,000.

The Nichols Moore Co., Cleveland, \$15,000 to \$50,000.

The Second Mortgage Securities Co., Toledo, \$100,000 to \$300,000.

The L. & M. Rubber Co., Carrollton, \$500,000 to \$1,000,000.

The Le Flore Oil & Gas Co., Youngstown, \$50,000 to \$500,000.

The McDonald Inderseat Valve Co., Cleveland, \$10,000 to \$500,000.

The Ohio Cities Gas Co., Columbus, \$110,000 to \$190,000,000.

The Crystal Candy Co., Toledo, \$20,000 to \$30,000.

The Zanesville Coco Cola Bottling Co., Zanesville, \$5000 to \$60,000.

The New London Farmers' Exchange Co., New London, \$25,000 to \$50,000.

The Miami Vulcanizing and Rubber Co., Cincinnati, \$50,000 to \$100,000.

The Beldon Motor Car Co., Canton, \$10,000 to \$100,000.

The Roehmheldt Co., Dayton, \$25,000 to \$50,000.

The Montgomery Printing Co., Troy, \$40,000 to \$85,000.

The Dorst Co., Cincinnati, \$100,000 to \$200,000.

The City Trust and Savings Bank, Youngstown, \$200,000 to \$300,000.

The Greater Akron Improvement Co., Akron, \$10,000 to \$300,000.

The E. Sperlberg Co., Cleveland, \$175,000 to \$325,000.

The Hercules Motor Manufacturing Co., Canton, \$500,000 to \$700,000.

The Case Produce Co., Akron, \$20,000 to \$75,000.

The Marleau-Bucklen-Schoen Co., Toledo, \$100,000 to \$350,000.

The Ohio Metal & Manufacturing Co., Dayton, \$20,000 to \$40,000.

The Flexible File Co., Fremont, \$10,000 to \$100,000.

The Acme Photo and Blue Printing Co., Cleveland, \$5,000 to \$25,000.

The Joseph Lazarus Co., Cincinnati, \$300,000 to \$450,000.

The J. P. Loomis Coal & Supply Co., Akron, \$150,000 to \$500,000.

The Solner Mining Co., Toledo, \$50,000 to \$100,000.

The Home Vulcanizing Co., Portsmouth, \$15,000 to \$30,000.

The Hines Printing Co., Toledo, \$10,000 to \$20,000.

The H. J. Jeffery Real Estate Co., Toledo, \$10,000 to \$25,000.

The Weinberg Furniture Co., Cleveland, \$20,000 to \$50,000.

The Eagle Box Board and Paper Mill Co., Toledo, \$50,000 to \$700,000.

The Cuyahoga Greenhouse Co., Brooklyn Heights, \$50,000 to \$100,000.

The Prairie Farmers' Cooperative Co., Prairie Depot, \$25,000 to \$40,000.

The Prasse Lumber Co., Cleveland, \$60,000 to \$450,000.

The Windermere Electrical Construction & Fixtures Co., Cleveland, \$6500 to \$25,000.

The Abner Manufacturing Co., Wapakoneta, \$50,000 to \$100,000.

The Brooklyn Lumber Co., Cleveland, \$60,000 to \$100,000.

The Sweet Valley Products Co., Sandusky, \$200,000 to \$1,000,000.

The Queen City Shale Brick Co., Cincinnati, \$50,000 to \$75,000.

The Hippodrome Building Co., Cleveland, \$1,000,000 to \$1,600,000.

The Mill and Mine Supply Co., Akron, \$100,000 to \$500,000.

The Central Bank Co., of Youngstown, Ohio, \$150,000 to \$200,000.

The W. H. Marvin Co., Urbana, \$200,000 to \$1,000,000.

The Dine DeWees Co., Canton, \$200,000 to \$300,000.

The People's Ice and Cold Storage Co., Warren, \$50,000 to \$150,000.

The Corporation Underwriters' Co., Cleveland, \$1250 to \$325,000.

The Cincinnati Aluminum Casting Co., Cincinnati, \$20,000 to \$75,000.

The Troy Body Co., Troy, \$100,000 to \$250,000.

Decreases.

The Hydraulic Pressed Steel Co., Cleveland, \$7,200,000 to \$600,000.

The Hydraulic Pressed Steel Co., Cleveland, \$6,000,000 to \$10,000.

The Thompson Estate Co., Troy, \$5,000 to \$25,000.

The W. H. Marvin Co., Urbana, \$300,000 to \$200,000.

The Selby Shoe Co., Portsmouth, \$1,000,000 to \$700,000.

The Knoop Baking Co., Piqua, \$200,000 to \$25,000.

PUBLIC UTILITIES COMMISSION

No. 1895—In the Matter of the Application of The Killbuck & Millersburg Oil & Gas Company for Permission to Issue and Sell One Hundred Eighty Four (184) Shares of the Common Capital Stock of Said Corporation. Prayer Granted.

(Dated February 9, 1920.)

This day this matter came on for final consideration upon the application of The Killbuck and Millersburg Oil & Gas Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and dispose of additional capital stock of the par value of \$3,680.00, the proceeds arising from the sale thereof to be applied toward the payment of the cost of drilling and equipping two new gas wells, each to be 800 feet in depth, the cost of which has been estimated at the sum of \$3,340.00.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein, and its independent investigation and inquiry thereupon,

(1) That the applicant now has in contemplation the drilling of two additional gas wells, the cost of which has been estimated at the sum of \$3340.00;

(2) That the issue of applicant's capital stock of the par value of \$3680.00 is reasonably required, and the money to be procured thereby necessary for the aforesaid extension and improvement of applicant's facilities, and

(3) That provision should be made for the amortization of said capital investment in the event that such drilling operation is, or becomes unproductive,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Killbuck and Millersburg Oil & Gas Company be, and hereby it is authorized to issue its common capital stock of the par value of three thousand, six hundred and eighty dollars (\$3,680.00), and that said capital stock be sold for the highest price obtainable but not less than ninety (90) per centum of the par value thereof. It is further

Ordered, That any discount arising from the sale of said capital stock be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The drilling and equipment of two additional wells, of a depth of eight hundred feet each, the cost of which has been estimated as follows:

Contractor's compensation for drilling, (2) 800 feet at \$1.80	\$2,880.00
Packers and fittings, (2)	120.00
Labor connecting up	60.00
Shooting, 2 at \$140.00	280.00
	\$3,340.00

It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order, and, if and as an amortization of said capital investment is required, as hereinafter provided, of the progress of said amortization. It is further

Ordered, That if the aforesaid drilling operations are unsuccessful, or, if successful and either, or both, of said wells shall hereafter fail to produce natural gas in a sufficient quantity to be classed as an active producing well, said The Killbuck and Millersburg Oil & Gas Company hereby is directed and required to amortize its said capital investment in said wells within five years, by appropriating from its revenues, in five equal annual installments, beginning at the date when said non-productivity of said well is determined, the sum required for such amortization, and such amortization fund shall be used solely for the payment for additions, extensions and betterments, to be used and useful in the production and distribution of natural gas by the applicant, to applicant's facilities.

✽

No. 1887—In the Matter of the Application of American Telephone & Telegraph Company for Authority to Purchase Stock of The Lima Telephone & Telegraph Company. Prayer Granted.

(Dated February 2, 1920.)

This matter coming on this day for consideration, after full hearing, upon the application of the American Telephone & Telegraph Company, (a corporation organized and existing under the

laws of the State of New York), asking the approval of this commission to its subscription for and purchase, at par, of ninety-seven shares, each, of the common and preferred capital stock of The Lima Telephone & Telegraph Company, (a corporation organized and existing under the laws of Ohio), being a part of the stocks of said The Lima Telephone & Telegraph Company, the issue of which was duly consented to and authorized by the order of this commission, made and entered as of date March 4th, 1913, in Proceeding No. 435, said subscription and purchase to be made by the said American Telephone & Telegraph Company in its own name or by its nominee, the Atlantic and Pacific Telephone & Telegraph Company, as its agent in that behalf; and it appearing to the commission that the public will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and the commission being satisfied that its consent for, and approval of the purchase of said stock should be given. Now, therefore, it is

Ordered, That the subscription for and purchase, at par, by the said American Telephone & Telegraph Company in its own name, or by the Atlantic and Pacific Telephone & Telegraph Company, its nominee and agent in that behalf, of ninety-seven (97) shares, each, of the common and preferred capital stock of said The Lima Telephone & Telegraph Company, be, and hereby it is authorized and approved.

✽

No. 1896—In the Matter of the Application of The Marion County Telephone Company for Authority to Issue and Sell \$159,900.00 Common Capital Stock. Prayer Granted.

(Dated February 10, 1920.)

This day this matter came on for final consideration upon the application of The Marion County Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of this commission to issue and sell additional common capital stock of the par value of one hundred and fifty-nine thousand, nine hundred dollars, the proceeds arising from the sale thereof to be used: (1) to discharge indebtedness of the sum of \$34,300.00 incurred and created for and on account of the purchase of material and the provision of additions, extensions and improvements to plant; (2) to provide the sum of \$9,100.00 necessary for the completion of certain work now under way or in contemplation, and (3) to reimburse applicant's depreciation

reserve account for the sum of \$116,500.00 (of the \$116,574.49) expended therefrom, within the five years next preceding the date of the filing of the application herein and since the thirty-first of January, 1915, for the construction, completion, extension and improvement of applicant's facilities.

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon,

(1) That within the five years next preceding the date of the filing of the application herein and, specifically within the period February 1st, 1915, and December 31st, 1919, (both inclusive) the applicant provided net additions to its capital investment of the sum of \$158,038.88;

(2) That the applicant now has in course of construction, the work having been begun subsequent to December 31, 1919, or under contemplation other additions to its facilities, the cost of which will be the sum of \$24,670.00;

(3) That the provision of the aforesaid addition to applicant's plant and facilities has been financed, (1) by the creation of an indebtedness of \$34,300.00, and (2) with moneys not procured by the issue of stock, bonds, notes or other evidences of indebtedness, from applicant's treasury, of which the sum of \$116,574.49 constituted the sum heretofore set up by the applicant as its depreciation reserve, and

(4) That the issue of applicant's common capital stock of the par value of \$159,900.00 is reasonably required and the money to be procured thereby necessary for the payment and discharge or readjustment of applicant's aforesaid indebtedness, to provide for the partial reimbursement of its treasury for the aforesaid uncanceled capital expenditures therefrom, and, in part, for the aforesaid construction, completion, extension and improvement of its facilities now under way,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Marion County Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of one hundred and fifty-nine thousand, nine hundred dollars (\$159,900.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purposes, and no others, to-wit:

(a) The payment and discharge of applicant's indebtedness of \$34,300.00, as aforesaid, incurred in connection with the provision of additions, extensions and improvements to its facilities, and

(b) The partial reimbursement, in such sum as the applicant may elect but in no event less than the sum of \$116,500.00 of the \$116,574.49 expended from the depreciation reserve, of applicant's treasury for the sum of \$123,738.88 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom, between the dates February 1st, 1915, and December 31st, 1919, (both inclusive), for the construction, completion, extension and improvement of its facilities, and the balance of such proceeds, if any there be, to be applied toward the payment of the cost of providing additions, extensions and improvements to applicant's facilities subsequent to December 31st, 1919, the cost of those now under way or in contemplation being the sum of \$24,670.00.

It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

The Compensation of County Commissioners for Services on Improvements Undertaken in Conformity With the New Ditch Code (Section 6442, et seq. 108, O. L., 926) is to be Paid in Accordance With Section 57 of Said Code, Even Though the Commissioners May Have Taken Office Before Said Code Became Effective.—The Compensation of County Commissioners, and the Fees of Clerks of Courts for Services in Ditch Matters Under Said New Ditch Code, Are to be Treated as Part of the Cost of the Improvement, Are to be Paid out of the General Ditch Improvement Fund, and Are to be Included in the Assessment Against Affected Lands.

Opinion No. 997—(Dated February 10, 1920.)

Hon. A. F. Allyn, Prosecuting Attorney, Port Clinton, Ohio.

Dear Sir: Receipt is acknowledged of your letter of recent date wherein after making reference to several sections of the new ditch code (now Sections 6442 et seq., 108 O. L., 926) you submit the following questions:

“1. What items of cost and expense of an improvement are included under Sections 11, 12 and 28 of said law?

2. Are the compensation to the commissioners, the auditor's fees, clerk of court's fees, surveyor's expense and fees to be included in the cost and expense of an improvement?

3. From what fund are the compensation to the commissioners, the auditor's fees, the clerk of court's fees and the surveyor's fees and expenses to be paid, the general ditch improvement fund or the general county fund?

4. What costs and expenses of the improvement are to be paid by assessment against property specially benefitted by an improvement?

5. Our board of county commissioners took office last September. Said law took effect in October. Under which law do our commissioners draw their salary and compensation for ditch work, the old law or the new?”

The matters coming within the purview of your inquiry have in large measure been discussed in two earlier opinions of this department, directed to the Bureau of Inspection and Supervision of Public Offices, one of said opinions being dated December 24, 1919, (No. 896) and the other January 23, 1919, (No. 957), copies of which are enclosed for your information.

The first of these opinions holds in substance that as to improvements begun before the taking effect of the new ditch code on October 10, 1919, county commissioners who assumed office prior to October 10, 1919, might receive compensation at the rate specified in Section 57 of said new ditch code for their services in ditch matters rendered after October 10, 1919. The reasons on which such holding was based furnish answer to your fifth question,—the compensation of the commissioners for services as to improvements under the new ditch code is governed by the provisions of Section 57 of that code.

The second opinion above referred to, deals particularly with the matter of services of the county surveyor and his employes and of the county auditor with reference to ditch proceedings under the new ditch code. The holding is in substance:

"1. Under the new ditch code (108 O. L., 926), the services of the county surveyor and of such employes as chairmen, axemen and rodmen in connection with a ditch improvement, are not to be calculated on a fee basis, but are to be calculated and assessed against affected lands at actual cost to the county as represented by the proportionate part of the salary of the surveyor and the proportionate part of the compensation of his assistants and employes as fixed by him under the provisions of Section 2788 General Code. The amount of such salary and compensation so assessed is to be returned to the general fund out of the general ditch improvement fund.

2. County auditors are not under the new ditch code entitled to any fees; nor are they entitled to a percentage on ditch assessment collections, except in the event that an assessment on becoming delinquent is carried to the general duplicate and collected as provided in Section 31 of said code, in which event the auditor is entitled to the percentage on such delinquent assessment named in Section 2624 General Code, said percentage to be charged to the general county fund and credited to the fee fund."

The opinion last noted furnishes answer to your second and third questions, except in so far as said questions inquire whether the compensation of commissioners and fees of the clerk of courts are to be included in the cost and expense of an improvement, and whether such respective compensation and fees are payable out of the general ditch improvement fund, or of the general county fund.

Sections 11, 28, 50, 57 and 58 of the new ditch code read respectively as follows:

"Sec. 11. If the county commissioners, or the court, find an improvement by ditch or drain or other means is necessary, and grant the petition therefor, either for the line set forth in

the petition, or upon one which in their judgment is more feasible to accomplish the object of the petition, all the cost and expense connected with their proceedings, as well as the cost and expense of construction of the improvement shall be assessed upon the property affected beneficially by such improvement, including any highways or other public grounds, according to the benefit derived therefrom and in proportion thereto. And as a part of such cost and expenses, to be so assessed, shall be included such portion of the expense of enlarging any waterway through a public highway or constructing, altering or reconstructing any bridge over such waterway, as may be determined by the county commissioners, or the court, and such portion of such expense shall be paid by the county from its bridge fund."

"Sec. 28. After the granting of the petition for any improvement under this chapter, and the letting of contracts for work and material, and the ascertainment and determination of all known claims for compensation for property taken, or damages to property from the construction of the improvement, the total cost thereof including the preliminary cost, and the actual or estimated cost of supervision and any known costs of litigation taxed against the county shall be assessed proportionately according to special benefits conferred, upon all the lots and parcels of land specially benefited thereby, the owners of which have, as in this chapter provided, had notice of the proceedings for such improvement, whether such lots and parcels of land abut on the improvement or not. Such assessment shall be made as well against the lands of any railway company, township, county, municipality, school district or board of education, or any other public board, as against privately owned property, for the benefit to the premises owned or controlled by such public corporation or body.

And in arriving at the amount of benefit to any piece of property due regard shall be had to any conditions that would require precedent expense before the benefit from the improvement would be available, and to any conditions that would permanently affect the degree of benefit that could be derived.

Provided that the county commissioners, or the court, if, and when, it is found that the improvement will benefit the public health, convenience and welfare, or the result will increase to a practicable degree the valuation of property for public taxation, may order such an amount of such total cost, not exceeding ten per cent, paid from the general ditch improvement fund, or if there be not sufficient unappropriated in such fund, from any unappropriated money of the general fund of the county. And the balance shall be assessed according to benefits as herein provided."

"Sec. 50. From the general ditch improvement fund, except as otherwise by law provided, all costs and expenses of improvements under this chapter shall be paid including dam-

ages, compensation, contract prices of construction, engineering expense, except the salary of the county engineer, costs and expenses of litigation, except the services of the prosecuting attorney and of any other county officer, deputy or employee for whose services, fees or costs are by law collected, which go into the county fee fund for payment of the same.

But no warrants shall be drawn to be paid from said fund unless it contain a sufficient amount not otherwise specifically appropriated to pay the same, and the letting and approving of any contract for an improvement or any award or judgment for compensation, damages or refund of assessments shall be deemed to be a specific appropriation of the amount of such obligation, and such amount shall be set apart for the purpose of such payment and contingently charged against said fund. If at any time said fund contain the proceeds of bonds issued and sold under this chapter, then said fund shall not be depleted below the obligation incurred by such bond issue or issues unless assessments or levies have been made or ordered made and in sufficient amount to redeem the same as they fall due. In case at any time obligations legally incurred exceed the amount of said improvement fund, an amount of the general revenue fund in the county treasury, if otherwise unappropriated; equal to the deficiency, may by resolution of the board of county commissioners be transferred to the general ditch improvement fund."

"Sec. 57. In addition to the regular salary provided by law for the county commissioners, each county commissioner shall receive five dollars per day for each day he is actually engaged on improvements under this act, but in no case shall any commissioner receive an aggregate of more than twenty-five dollars for services on one improvement, nor shall they receive pay for two separate improvements on the same day. Such amounts shall be paid by warrants issued by the county auditor upon the county treasurer, upon the filing in his office of an itemized statement by the commissioner of such service; provided, however, that the aggregate compensation paid a county commissioner under this section for said service shall not exceed in one year five hundred dollars."

"Sec. 58. The fees that shall be charged and collected for services required of any public officer under this chapter, if not specifically otherwise designated, shall be the fees allowed for like service in the office to which he was elected or appointed, and if he be an officer receiving a salary, and his collection of fees go to the county, then such fees collected hereunder shall be in like manner accounted for.

Publication of notices, and service by publication in this chapter required, shall be paid at the legal rate provided for publication of like matter originating in the common pleas court."

In so far as compensation to county commissioners is concerned, it is clearly to be charged to the specific improvement on which the commissioners' services are rendered. Section 11, which immediately follows those sections providing for such preliminary steps as filing of petition, report of engineer, hearing, view, etc., provides that "all the cost and expense connected with their proceedings,"—that is, the preliminary proceedings,—shall be assessed, etc. Section 28 states that the "total cost of the improvement "including the preliminary cost" is to be assessed "upon all the lots and parcels of land specially benefited." Section 57 fixes the per diem for services of the commissioners, and describes such per diem as being "for each day he is actually engaged on improvements under this act." It then goes on to fix a limit of \$25.00 "for services on one improvement." It thus becomes clear that the new ditch code regards the services of the commissioners as being rendered for and in connection with the improvement rather than for the county as a whole. Besides, the general policy of providing a per diem as apart from the annual salary of the commissioners indicates a purpose that the value of the services of the commissioners as represented by the per diem be charged to the improvement. Therefore, when Sections 11, 28 and 57 are read together the conclusion follows that the per diem is to be taken as part of the cost of the improvement and assessed accordingly, as provided in Section 28.

This conclusion having been reached, it is clear from the provisions of Section 50 that the per diem of the commissioners is to be paid out of the general ditch improvement fund; for that section reads in part "from the general ditch improvement fund, except as otherwise by law provided, all costs and expenses of improvements under this chapter shall be paid," etc. No provision in the new ditch code is found which indicates that the per diem of the commissioners is to be paid out of any other fund than the general ditch improvement fund; and no practical reason is perceived why such payment may not be made out of the general ditch improvement fund, especially when it is kept in mind that the per diem of the commissioners as provided in Section 57 is to be "in addition to the regular salary provided by law for the county commissioners."

Referring to the matter of fees of the clerk of courts. The general duties of that officer in connection with a ditch improvement may be found by reference to Section 3 of the new ditch code. That section, among other things, provides that if the petition shall have been filed with the auditor by the board of county commissioners,—

in other words, if the board of county commissioners is the petitioner—then, and in that event, notice of the filing is to be given by the auditor to the clerk of courts and the petition turned over to the latter officer. Proceedings are then had before the court of common pleas in the same manner as the proceedings are conducted before the board of county commissioners when that body is not the petitioner.

It is thus seen that the clerk of courts will have certain duties to perform which would be performed by the county auditor had the proceedings taken place before the board of county commissioners. The fees of the clerk of courts are to be calculated as directed by the above quoted Section 58 of the new ditch code, since there is no specific schedule of fees for clerks included in the new act; and of course, in accordance with the specific directions of said Section 58, the fees so collected by the clerk are to be paid over to the county. Plainly, any fees paid the clerk in connection with a ditch proceeding constitute part of the total cost as described in Section 28, and are to be included in the amount that is to be assessed against benefited lands in accordance with said last named section.

It is also clear that the fees of the clerk are to be paid from the general ditch improvement fund, for much the same reasons as have been stated above with respect to the per diem of county commissioners. It is quite true that the first sentence of Section 50 is somewhat confusing in specifying various items that are to be paid out of the general ditch improvement fund. The expression is used, "costs and expenses of litigation," and this expression is followed by the words "except the services of the prosecuting attorney, and of any other county officer, deputy or employe for whose services, fees or costs are by law collected which go into the county fee fund for payment of the same." The evident intent of the clause last quoted is not to except from the item "costs and expenses of litigation" anything but the services of the prosecuting attorney. In other words, the language "and of any other county officer, deputy or employe for whose services, fees or costs are by law collected which go into the county fee fund for the payment of same" is not intended to constitute an exemption from the costs and expenses of litigation directed to be paid out of the general ditch improvement fund, but is intended to convey the idea that the services of such officer, deputy or employe in ditch matters generally are to be paid from the general ditch improvement fund.

Your first and fourth questions are very general in character

and cannot well be specifically answered, since it would be difficult to lay down an arbitrary statement of various items of expense which might go into ditch improvements of various types and in various places. However, it is believed that these questions are directed particularly to the matters which you specify in questions two and three, and that the general discussion in this opinion, taken in connection with the two opinions, copies of which are enclosed, will furnish a rule as to the matters you have in mind.

The conclusions from the foregoing may be summarized as follows:

(1) The compensation of county commissioners for services on improvements undertaken in conformity with the new ditch code (Sections 6442 et seq. 108 O. L., 926) is to be paid in accordance with Section 57 of said Code, even though the commissioners may have taken office before said code became effective.

(2) The compensation of county commissioners, and the fees of clerks of courts for services in ditch matters under said new ditch code, are to be treated as part of the cost of the improvement, are to be paid out of the general ditch improvement fund, and are to be included in the assessment against affected lands.



As Between the State of Ohio and a Corporation, a General Provision Contained in a Subscription to the Common Capital Stock of a Corporation Organized Under the General Corporation Laws of This State, That the Subscribers Shall First Offer Their Stock to the Company at Its Market Value Before Selling the Same to Others, is Without Warrant of Law and is Unauthorized. The Effect of an Executed Transaction Whereby the Corporation Acquires Shares of Its Capital Stock is Not Considered.

Opinion No. 1002—(Dated February 10, 1920.)

Department of Securities, Columbus, Ohio.

Gentlemen: Your letter of recent date making inquiry concerning the authority of a corporation organized under the general corporation laws of this state, to enter into an executory contract with subscribers to its common capital stock whereby the subscribers bind themselves to offer their shares to the company at market value before selling them to others, was duly received.

While your question, as I understand it, does not involve the validity or effect of an executed transaction or purchase, that phase

of the subject must necessarily be referred to in considering the Ohio cases dealing with an executory agreement.

In *Coppin v. Greenlees & Ransom Co.*, 38 O. S., 275, which involved an executory contract on the part of the corporation to purchase its own shares, the court held that:

"An executory agreement between a manufacturing corporation of this state and one of its stockholders, for the purchase of the stock of such corporation, by the former from the latter, cannot be enforced either by action for specific performance or for damages."

Previous decisions of the supreme court of this and other states were referred to in the opinion and summed up by the court as follows:

"The power of a trading corporation to traffic in its own stock, where no authority to do so is conferred upon it by the terms of its charter, has been a subject of much discussion in the courts; and the conclusions reached by different courts have been conflicting. Of course, cases, wherein the power is found to exist by express or implied grant in the charter, furnish no aid in the solution of the question before us. * * * *

The doctrine that corporations, when not prohibited by their charters, may buy and sell their own stocks, is supported by a line of authorities; and, prominent among them, may be mentioned the cases of *Dupee v. Boston Water Power Co.*, 114 Mass., 37, and *C. P. & S. R. R. Co. v. Marsailles*, 84 Ill., 145. But nevertheless, we think the decided weight of authority both in England and in the United States, is against the existence of the power unless conferred by express grant or clear implication. The foundation principle, upon which these latter cases rest, is that a corporation possesses no powers except such as are conferred upon it by its charter, either by express grant or necessary implication; and this principle has been frequently declared by the supreme court of this state; and by no court more emphatically than by this court. It is true, however, that in most jurisdictions, where the right of a corporation to traffic in its own stock has been denied, an exception to the rule has been admitted to exist, whereby a corporation has been allowed to take its own stock in satisfaction of a debt due to it. This exception is supposed to rest on a necessity which arises in order to avoid loss; and was recognized in this state as early as *Taylor v. Miami Exporting Co.*, 6 Ohio, 176, and has been incidentally referred to as an existing right since the adoption of our present constitution. *State v. Building Association*, 35 Ohio St., 258."

In *Morgan v. Lewis*, 46 O. S., 1, which involved an executed transaction, the court expressly acquiesced in the general principle.

that a corporation is without authority to purchase shares of its capital stock, but recognizes an exception to the general rule if the acquisition was necessary to save the company from loss. In that case, the same as in *Coppin v. Greenlees & Ransom Co.*, *supra*, previous decisions of the supreme court were referred to and reviewed by the court. In the opinion, at page 6, the court said:

"We have no disposition to call in question the general and well recognized principle that a corporation cannot buy its own stock. It is conceded that this principle proceeds upon a want of power, rather than upon any express prohibition in its charter. With this general principle conceded, however, the right of a corporation to take its own stock in satisfaction of a debt due to it, has been recognized in this state.

This has been recognized as an exception supposed to rest upon the necessity of avoiding loss. *Coppin v. Greenlees*, 38 Ohio St., 279. It is, nevertheless, a relaxation of the general rule. It is, of course, because of the necessity of avoiding loss, and not because it is for the satisfaction of a debt that the exception is recognized. If the same or a like necessity of avoiding loss should arise in any of the transactions of the company, it could not, with any show of reason, be contended that the application of this principle of necessity should be limited by any iron rule to the case of taking stock for an otherwise hopeless debt."

Near the close of the opinion it was made plain by the court that it was not considering the case of a corporation which had acquired shares of its capital stock, or in other words, an executed transaction.

Many decisions on the subject by lower Ohio courts will be found digested in 2 Page's Ohio Digest, p. 3931-3933, and 1 Page's Ohio Digest, Supp., p. 2382. Two of the most recent cases are *Siders v. Gem City Concrete Co.*, 13 C. C. (n.s.) 481, and *Strauss v. Car Co.*, 28 O. C. A., 574, both of which involved executed transactions and reviewed at length former decisions of the supreme court with respect to both executory and executed transactions. In the latter case it was said, consistent with former decisions, that:

"It is undoubtedly the law as sustained by the leading authorities, that a corporation cannot purchase or acquire its own stock except in satisfaction of a debt due to it or through other exceptional circumstances to save the company from loss."

The question you have presented being limited to the authority of an Ohio corporation to enter into an executory contract with its shareholders, and not involving the rights or interests of the corporation, its shareholders, or creditors, as between themselves, after

a contract of purchase has been consummated, you are advised that, as between the state and the corporation, a general provision contained in a subscription to the common capital stock of a company organized under the general corporation laws of this state, that the subscribers shall first offer their stock to the company at its market value before selling the same to others, is without warrant of law and is unauthorized.

The effect of an executed transaction whereby the corporation acquired shares of its own capital stock, under a claim that the acquisition was necessary to save itself from loss, etc., would depend upon the facts and circumstances of each particular case, and hence is not considered in this opinion.



A Foster Mother is Not a Mother Within the Meaning of Section 1683-2 General Code, Authorizing the Payment of a Mother's Pension.

Opinion No. 1000—(Dated February 10, 1920.)

Hon. Wilbert J. Bissman, Probate Judge, Mansfield, Ohio.

Dear Sir: Your letter of recent date inquiring whether or not the foster mother of orphan children under school age who are in necessitous circumstances, is a mother within the meaning of Section 1683-2 General Code, relating to mothers' pensions, was duly received.

Section 1683-2 General Code, so far as material to the determination of your question, reads as follows:

"For the partial support of women whose husbands are dead, or become permanently disabled by reason of physical or mental infirmity, or whose husbands are prisoners or whose husbands have deserted, and such desertion has continued for a period of three years, when such women are poor, and are the mothers of children not entitled to receive age and schooling certificate, and such mothers and children have a legal residence in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows:" etc.

In 1914 Annual Report of the Attorney General, Vol. I, page 885, in an opinion dated June 29, 1914, it was held that neither an "adopted mother" nor a "grandmother" who is keeping and supporting a grandchild whose parents are dead, is a mother within the meaning of the statute above mentioned. The statute was subsequently amended (106 O. L., 436), but in a respect which does not require a modification of the opinion referred to in so far as the question under consideration is concerned.

In the opinion at page 887, the former attorney general said:

"I am of the opinion that an adopted mother, other conditions being met, is not entitled to the pension. While the act is to be given a liberal interpretation to accomplish the result at which it is aimed, yet, to my mind, the word 'mother' as repeatedly used therein, does not have, naturally, the significance of the term 'adopted mother,' and, in my judgment, such a meaning is too artificial to be given to the former term, even under sanction of a liberal interpretation.

For similar reasons, a grandmother, who is keeping and supporting a child of her son or daughter, when both parents of the children are dead, cannot be, in my judgment regarded as a mother, within the meaning of the act, even though her situation satisfies the other conditions enumerated therein."

Under the doctrine of the foregoing opinion, you are advised that a foster mother is not a mother within the meaning of Section 1683-2 General Code.

✱

The Words "Brother" and "Sister," as Found in Paragraph 3, of Section 5334 of the General Code, of the Inheritance Tax Law, Includes Half Brothers and Sisters.

Opinion No. 998—(Dated February 10, 1920.)
Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your letter of January 26th, requesting the opinion of this department on the question as to whether or not the words "brother" and "sister," as found in paragraph 3 of Section 5334 of the General Code (the inheritance tax law), include half-brothers and half-sisters.

The part of the law to which you refer is that defining the classes of successions for the purposes of the exemption. It is in full as follows:

"3. When the property passes to or for the use of a brother, or sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars."

It might be pertinent to quote the entire section, but it is believed sufficient to remark that nowhere in that section nor in the entire law is any mention made of a distinction between relatives of the whole blood and relatives of the half blood.

The inheritance tax laws of other states contain similar provisions but, curiously enough, no authority seems to be available upon the precise question.

However, in a remote sense at least the inheritance tax law is in *pari materia* with the statutes of descent and distribution. In the latter sections, quotation of which may be omitted, we find use made of the terms "brothers and sisters of the intestate who are of the blood of the ancestor from whom the estate came," (Sec. 8573); "brothers and sisters of such ancestors," (Sec. 8573); "brothers and sisters of the half-blood of the intestate * * * though such brothers and sisters are not of the blood of the ancestors from whom the estate came." (Sec. 8573); "half-brothers and sisters of the intestate" (Sec. 8573); "brothers or sisters of the intestate of the whole blood" (Sec. 8574); "brothers and sisters of the half-blood" (Sec. 8574); "brothers and sisters of any such husband or wife" (Sec. 8576); "brothers and sisters of such intestate" (Sec. 8577); "brothers and sisters of such deceased husband to wife" (Sec. 8577.)

It would seem to be clear even at a glance that in the above named sections the phrase "brothers and sisters," when not qualified, includes brothers and sisters of the half-blood as well as those of the whole blood. In other words, though for certain purposes the general assembly has chosen to discriminate between the whole blood and the half-blood, yet this discrimination is always effected by means of qualifying the words, "brothers and sisters" by the addition of other words. Hence, the conclusion seems reasonable that in dealing with inheritances the legislature has used the simple words "brother" and "sister" to include both the half-blood and the whole blood. This has been the judicial interpretation of these sections.

Oliver v. Sanders, 8 O. S., 502;
White v. White, 19 O. S., 531;
Stockton v. Frazier, 81 O. S., 227.

The syllabus in the last cited case is as follows:

"The half-brother and half-sister of the ancestor are included in the word, 'brothers and sisters of such ancestors,' in the fifth subdivision of Section 4158, Revised Statutes, prescribing the order of descent of ancestral real estate."

The opinion of Judge Summers in the case contains an interesting commentary upon the philosophical justification (or lack of it) for making any distinction between the half-blood and the whole blood (see pp. 236 et seq.)

Lexicographic definitions are as follows:

"Brother: A male person who has the same father and mother with another person, or who has one of them."—(Webster).

"A male person having the same parent or parents as another or others."—(Standard Dictionary.)

These definitions, which purport to state the natural meaning of such terms, have been followed under statutes of descent and distribution in—

Anderson v. Bell, 140 Ind., 375; 29 L.R.A., 541;
 State v. Guiton, 51 La. Ann., 155;
 Lynch v. Lynch, 132 Cal., 214;
 Gardner v. Collins, 27 O. S., 58;
 Sheffield v. Lovering, 12 Mass., 490;
 Rowley v. Stray, 32 Mich., 70;
 Clay v. Cousins, 17 Ky., 75;
 Marlow v. King, 17 Texas, 177.

A contrary result was reached under Johnson's definition in *Lawson v. Perdriau*, 1 McCord, 456.

It is supposed that a careful examination would disclose an expansion of the usage with respect to these terms. It is quite possible that the term "brother" or "sister" may have been originally used in the restricted sense; but it is clear from the foregoing authorities that, at least in America, present usage of these terms, unqualified, imports the broader and more liberal meaning.

For these reasons, it is the opinion of this department that the words "brother" and "sister" as found in paragraph 3 of Section 5334 of the General Code, include half-brothers and half-sisters.

✽

The Public Roads to be Taken Into Account in Calculating the Salary of the County Surveyor as Directed by the Provisions of Section 7181 General Code, Are State Roads, County Roads and Township Roads Within the County as Defined by Section 7464 General Code. The Mileage of Public Ways Within a Municipal Corporation is Not to be Included in Such Calculation, But the Mileage of Streets in Unincorporated Villages Within the County is To be Included.

Opinion No. 1001—(Dated February 10, 1920.)

The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: You have recently submitted to this department the following question:

"What roads are considered in basing the county surveyor's salary under Section 7181 General Code, as amended, 107 O. L., 110? Does this include streets in cities and villages, and does it include township roads?"

It is unnecessary to quote in full the provisions of Section 7181. That section relates to the salary of the county surveyor, and provides that such salary shall be computed by taking into account the mileage of the public roads, the population, and the tax duplicate of the county. Your question concerns only the first of these elements, and in that respect the statute reads:

"One dollar per mile for each full mile of the first one thousand miles of the public roads of the county."

Your question may be answered by quoting Section 7464 relating to state, county and township roads, on the one hand, and Section 3714 relating to municipal streets on the other.

Said Section 7464 (106 O. L., 648) reads as follows:

"The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

(a) State roads shall include such part or parts of the inter-county highways and main market roads as have been or may hereafter be constructed by the state, or which have been or may hereafter be taken over by the state as provided in this act, and such roads shall be maintained by the state highway department.

(b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, and all such roads shall be maintained by the county commissioners.

(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

Section 3714 General Code reads as follows:

"Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts and viaducts, within the corporation, and shall cause them to be kept open, in repair, and free from nuisance."

Very clearly from a comparison of these two sections, the mileage to be taken into consideration in calculating the surveyor's salary as directed in Section 7181 is the mileage of those public roads named in Section 7464, to wit, state roads, county roads and township roads. The county surveyor is not concerned with the care, supervision, control or repair of public ways within municipal corporations, for by the express terms of Section 3714 such matters are the concern of the municipal council. Therefore, there is no reason for supposing that it was contemplated in the enactment of Section 7181 that the mileage of public ways within corporations should be taken into account in calculating the surveyor's salary. In this connection, it should be noted that the salary plan embodied in said Section 7181 was first incorporated into the statutes as part of the so-called Cass highway act (106 O. L., 574); and in that act Section 7464, as above quoted, was also enacted.

It is proper to call attention to the provisions of Sections 1193-1 and 6949 to 6951-1. These sections provide that under certain circumstances the state highway commissioner or the county commissioners may extend a road improvement into or through a village. However, one of the conditions precedent to such authority in the state highway commissioner or county commissioners is the consent of village council. The evident purpose of these sections is to provide a method whereby a state or county road improvement may be made continuous through a village, and there is nothing either in the sections themselves, or elsewhere in the General Code, to indicate that the village is relieved of the control and supervision of the portion of highway within its limits, in any such sense as to bring said portion within the purview of Section 7181.

It is proper also to add that the general classification in Section 7464 is broad enough to include within the class "township roads," streets within an unincorporated village, and such streets therefore are to be included in calculating the mileage of public roads mentioned in Section 7181.

Answer to your question is therefore given as follows:

The public roads to be taken into account in calculating the salary of the county surveyor as directed by the provisions of Section 7181 General Code, are state roads, county roads and township roads within the county as defined by Section 7464 General Code. The mileage of public ways within a municipal corporation is not to be included in such calculation, but the mileage of streets in unincorporated villages within the county is to be included.

*

The Superintendent of Banks May Require a Deposit of \$100,000.00 Mentioned in Section 710-150, General Code as an Incident to His Issuance of the Certificate Mentioned in Sections 710-55 and 710-56, General Code, by a Banking Corporation Chartered With Trust Powers. Clearly it is the Legislative Intention Ultimately to Prevent the Use of the Word "Trust" by Companies not Qualified to Do a Trust Business and an Institution is Certainly not Qualified to do a Trust Business—That is, to Carry on and Administer Trusts, Unless it Has Made the Deposit Required.

(Opinion 965—Dated January 26, 1920)

Hon. Ira R. Pontius, Superintendent of Banks, Columbus, Ohio.

Dear Sir: I am in receipt of the following communication from you:

"Will you please advise this department in connection with the two questions submitted herewith, arising under recently enacted section 710, General Code of Ohio?

(1) May the Superintendent of Banks properly require that the deposit of \$100,000 mentioned in 710-150 be made as an incident to his issuance of the certificate mentioned in 710-55 and 56, by a banking corporation chartered with trust powers and using the word 'trust' in its corporate name?.

(2) May the Superintendent of Banks properly require that the deposit of \$100,000 mentioned in 710-150 be made as an incident to his issuance of the certificate mentioned in 710-55 and 56, by a banking corporation chartered with trust powers but which does not use the word 'trust' in its corporate name?"

You have advised that you do not wish me to consider these inquiries as relating to guaranty title and trust companies and, I am therefore expressing no opinion as to your powers or duties regarding the organization of such companies.

The discussion of the above questions properly begins with a

consideration of Article XIII, Section 3 of the Constitution of Ohio, which provides:

"Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or 'person, partnership or association shall use the word 'bank', 'banker' or 'banking', or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state."

The legislature, in enacting the Graham banking act, went somewhat beyond the constitutional provisions by the enactment of Section 710-3 General Code, in the following language: (108 O. L., 81.)

"The use of the words 'bank', 'banker' or 'banking', or 'trust', or words of similar meaning in any foreign language, as a designation or name, or part of designation or name, under which business is or may be conducted in this state, is restricted to banks as defined in the preceding section. All other persons, firms or corporations are prohibited from soliciting, accepting or receiving deposits, as defined in section 2 of this act and from using the word 'bank', 'banker', 'banking', or 'trust', or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business may be conducted in this state. Any violation of this prohibition, after the day when this act becomes effective, shall subject the party chargeable therewith, to a penalty of \$100.00 for each day during which it is committed or repeated. Such penalty shall be recovered by the superintendent of banks by an action instituted for that purpose, and in addition to said penalty, such violation may be enjoined and the injunction enforced as in other cases.

Provided, however, that any corporation now incorporated under a name which includes the word 'trust', and which is qualified to transact a trust business, may continue the use of such word so long as it complies with the requirements of this act; provided, that every corporation incorporated under a name which includes the word 'trust' and is not qualified to transact a trust business is required to change

its name so as to eliminate the word 'trust' therefrom within two years from the date when this act becomes effective during which period such company shall not be subject to the penalty of this section."

The steps to be taken in the organization of a bank or trust company are also prescribed in the same act. Section 710-41 General Code, relates to the number of incorporators, the name to be used, the place where business is to be transacted, the amount of capital and its division into shares, and requires the articles of incorporation to set out:

"the purpose for which it is formed, whether that of a commercial bank, savings bank, trust company, or a combination of two or more or all of such classes of business, or a special plan bank, as provided in section 180 of this act."

Subsequent sections make it the duty of the secretary of state to transmit to the superintendent of banks a copy of such articles of incorporation and provide that the incorporators must cause notice of their intention to organize to be published.

The language of Section 710-44 General Code, is in part as follows: (108 O. L., 91.)

"Upon receipt of a copy of the articles of incorporation of such proposed bank, the superintendent of banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the superintendent of banks shall so certify to the secretary of state, who shall thereupon record such articles of incorporation. **** ."

It should here be observed that by Section 710-2 General Code, the term "bank" is to include trust companies unless the context otherwise requires. After the superintendent's certificate has been furnished and the articles of incorporation recorded as provided in Section 710-42 General Code, the bank completes its organization and the general incorporation laws are made applicable by Section 710-52 General Code. The next duty of the superintendent is prescribed by Sections 710-55 and 710-56, containing the following language: (108 O. L., 93-94.)

"Sec. 710-55. When a certificate is transmitted to the superintendent of banks, signed by the president, secretary or treasurer of such corporation, notifying him that the entire capital stock of such corporation is subscribed, and paid in, and that such corporation has complied with all the provi-

sions of law required to be done before it can be authorized to commence business, the superintendent of banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business.

"Sec. 710-56. If upon such examination of the facts referred to in section 55, and of any other facts which may come to the knowledge of the superintendent of banks, he finds that such corporation is lawfully entitled to commence business, he shall give it a certificate under his hand and official seal that it has complied with all the provisions required by law and is authorized to commence business."

We are now brought to an examination of Section 710-150 General Code. The following portion of it is material: (p. 118, of 108 O. L.)

"No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trusts which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within this state, until its paid in capital is at least one hundred thousand dollars, and until such corporation has deposited with the treasurer of the state in cash the sum of one hundred thousand dollars, except that the full amount of such deposit by such corporation may be in bonds of the United States, or of this state or any municipality or county therein, or of any other state or municipality or county therein, or in the first mortgage bonds of any railroad corporation that for five years last past has earned at least five per cent net on its issued and outstanding capital stock, which securities and the sufficiency thereof shall be approved by the superintendent of banks. ***"

In this connection we should also consider Section 710-151 and a part of Section 710-154, General Code, which respectively provide: (108 O. L., 118-119.)

"Sec. 710-151. Every foreign trust company shall, upon being admitted to do business within this state as otherwise provided by law, file a certified copy of its certificate of admission with the superintendent of banks, together with a certified copy of the last published statement made of the state in which it is organized and doing business, and upon approval thereof and of the funds and securities to be deposited as in the preceding section provided, he shall certify that fact to the treasurer of the state, and upon deposit of such funds and securities with the treasurer of state the superintendent

of banks shall thereupon, and upon the payment of a license fee of one hundred dollars therefor, license said trust company to transact business within this state for the period of one year thereafter."

"Sec. 710-154. No such trust company, foreign or domestic, authorized to accept and execute trusts, either directly or indirectly through an officer, agent or employe thereof, shall certify to any bond, note or other obligation to evidence debt, secured by any trust deed or mortgage upon or accept any trust concerning property location wholly or in part in this state, without complying with the provisions of sections 150, 151 and 152 of this act. ****."

The powers of trust companies appear in Sections 710-156, et seq. General Code. By the former they—

"may receive and hold moneys, or property in trust, or on deposit from executors, administrators, assignees, guardians, trustees, corporations or individuals upon such terms and conditions as may be agreed upon between the parties."

The subsequent sections recite what are strictly trust duties. Section 710-161 declares that: (p. 121 of 108 O. L.)

The capital stock of such trust company with the liabilities of the stockholders existing thereunder, and the fund deposited with the treasurer of the state as provided by law shall be held as security for the faithful discharge of the duties undertaken by such trust company in respect to any trust, and no bond or other security, except as hereinafter provided, shall be required from and such trust company for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, assignee, or depository; except that the court or officer making such appointment may, upon proper application, require any trust company which shall have been so appointed to give such security for the faithful performance of its duties as to the court or officer shall seem proper, and upon failure of such trust company to give security as required may remove such trust company and revoke such appointment."

The difficulty encountered is now apparent. Must the trust company make its deposit of \$100,000 with the treasurer of state before it receives its final certificate, or may it incorporate with trust powers, but withhold its deposit until it actually accepts the trust or enters upon the discharge of trust duties? In other words, may we have an inactive trust company organized under the present act without such deposit being made?

A superficial consideration of Sections 710-150 and 710-154 General Code would seem to make the deposit a prerequisite only to

the acceptance of trusts or the certification of bonds, notes or other obligations. This view is strengthened by the contemporaneous construction of certain old sections under which deposits were not required from inactive trust companies.

The provisions quoted from Section 710-150, with some exceptions not material here, were found in Section 9778 General Code; those quoted from Section 710-154, in Section 9780. We have therefore to consider whether or not the same rule should be followed in applying the present act, or whether there is something in the latter which requires a deposit at the time of the organization of the company.

It has been noted above that the articles of incorporation must set out the purpose for which the company is formed; that the superintendent must determine whether the corporation "will be lawfully entitled to commence the business of banking" and later whether it "has complied with all the provisions of law required to be done before it can be authorized to commence business." Now, manifestly, a trust company is incorporated for the purpose of doing a trust business. When it commences that business it begins to administer trusts. The latter function it can not perform without having made its deposit. How, then, can the superintendent find that it has complied with all the provisions of law necessary to its commencing business, if the deposit is not made?

In Section 710-56 General Code the finding is declared to be "that such corporation is lawfully entitled to commence business." Certainly, a trust company is not lawfully entitled to commence a trust business unless it has made its deposit. It may be suggested that it may organize for a combination of two or more purposes and be qualified to engage in its other function without making a deposit requisite to beginning the trust business. But in coming to his conclusion, the superintendent of banks has had before him the articles of incorporation which show that the company may do a trust business. The company insists upon a certificate authorizing it to do such business. Is not the superintendent bound to assume that it will transact the business which it is authorized to do and must he certify that it is properly qualified when it is not?

The argument that the trust company can qualify later before it actually accepts trusts is not convincing to my mind. The qualification must be shown before the certificate is granted and the reason is obvious. The functions of trust companies under the present statute are wide. They may act without giving further security for the benefit of the cestui que trust. To license them to do a trust

business and so proclaim to the world, might subject those who deal with them, in reliance upon their full compliance with the law, to imposition by companies of insufficient resources.

Then some light is thrown upon the question by the language of Section 710-151 General Code, viz:

"Every foreign trust company shall, upon being admitted to do business within this state ** and upon approval *** of the funds and securities to be deposited" be licensed by the superintendent of banks to transact business within the state for the period of one year.

It is a fair assumption that accepting trusts and doing business mean practically the same thing. A foreign trust company can not do any business in the state without making its deposit, except to lend money. It can not receive deposits. Section 710-40 General Code.

A domestic trust company is authorized by Section 710-156 General Code to receive deposits. An institution, soliciting, receiving or accepting money on deposit as a business is a bank. It would seem, therefore, by analogy, that the right of a domestic institution to exercise its banking functions when it also has trust powers, ought to be forbidden unless it has made the deposit required. Then we are to bear in mind that when Sections 710-150 and 710-154 General Code were enacted, there were trust companies already doing business in Ohio. Their organization was not effected under the statute, so naturally these provisions were so worded as to affect their functions, not their creation.

To have said that no trust shall be incorporated without making the deposit, would have left out those companies already in existence, which in my opinion affords a reason for the somewhat unusual language used. Light is thrown on your questions by a consideration of Section 710-3 General Code, already quoted. The provision is that any corporation incorporated at the time of the passage of the act under a name including the word "trust" and qualified to do a trust business, may continue so long as it complies with the requirements of the act; that if it is incorporated under such name and is not qualified to transact a trust business, it must change its name so as to eliminate the word "trust" therefrom within two years from the date when the act becomes effective.

Clearly it is the legislative intention ultimately to prevent the use of the word "trust" by companies not qualified to do a trust business and an institution is certainly not qualified to do a trust

business—that is, to carry on and administer trusts, unless it has made the deposit required.

The legislative policy as to a corporation qualified to do a trust business but not using the word “trust” in its corporate name, is not quite so clear, but in my opinion it may be fairly deducible from the statutes quoted and examined.

I think therefore that both your questions should receive the same answer. Nor is it apparent how the conclusion here reached can work any particular hardship. If a corporation wishes to hold itself out as having trust powers, it should be willing to provide all the security which the public has the right to assume surrounds its transactions. The ordinary individual who deals with such company will not take the trouble to ascertain whether or not it has made its deposit, but relies upon its financial responsibility because of the requirements which the law makes of it. Nor should a company which is incorporated with trust powers, which it should not desire to use, complain because it is required to secure the public against an unauthorized use of those powers. If it should not desire to meet the requirements imposed upon trust companies, it need not organize as such. It ought not to require the superintendent of banks to determine each time it exercises a trust function that it has a deposit up, or insist that whenever it completes the trust it may withdraw its deposit. Such course would require constant supervision which to my mind is a strong argument in favor of the conclusion which I have reached.

SUPREME COURT

MOTION DOCKET

10368. Helen B. Smeck et al. vs. Frank Tallmadge et al. Motion for an order directing the Court of Appeals of Fairfield county to certify its record. Overruled.

10382. Fred W. Baird et al vs. Joseph F. Cunningham, Exr., et al. Motion for on order directing the Court of Appeals of Perry county to certify its record. Overruled.

10388. Edward Ness vs. The State of Ohio. Motion by plaintiff in error for leave to file a petition in error to the Court of Appeals of Hamilton county. Overruled.

10394. Elmer Leonard vs. The Industrial Commission of Ohio. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Sustained.

10396. Industrial Commission of Ohio vs. Maria Placida Belloma Musselli. Motion for an order directing the Court of Appeals of Delaware county to certify its record. Sustained.

10401. The Steubenville, East Liverpool & Beaver Valley Traction Co. vs. The City of Wellsville. Motion by plaintiff to extend time for filing printed record and briefs in cause No. 16529 on the general docket. Sustained.

GENERAL DOCKET

16284. The Ohio Fuel Supply Co. vs. Mary E. Shilling. Wayne. Judgment reversed. Cause remanded.

16383. The Higbee Co. vs. Walter Jackson, an infant. Cuyahoga. Judgment affirmed.

SECRETARY OF STATE

NEW INCORPORATIONS

The Cleveland Toy and Novelty Co., Cleveland, \$100,000. J. H. Kellog, E. B. Preese, R. Hall, M. A. Clancy, G. M. Lavelle.

The Adams Foundry and Machine Co., Youngstown, \$100,000. F. G. Freidrichs, John Salato, G. Winkelhotz, T. Donofrio.

The C. W. & P. Construction Co., Akron, \$50,000. T. B. Carmichael, C. Williams, Daniel Peters, C. M. Carmichael, H. F. McDanel.

The Fischer Manufacturing Co., Cincinnati, \$75,000. B. T. String, J. M. String, G. A. Dornette, A. E. Koch, A. C. Geringer.

The Daggett-Zoller Co., Toledo, \$10,000. J. Zoller, O. L. Hankinson, C. L. Daggett, C. H. Daggett.

The Commercial Employment Co., Columbus, \$10,000. R. C. Byers, J. S. Dawson, L. W. Cargill, H. W. Grout.

The Cole Publishing Co., Cleveland, \$25,000. I. Grohs, P. Kuerderle, M. L. Harrington, S. I. Powell, J. C. Frederick.

The Cincinnati-Kentucky Oil Co., Cincinnati, \$50,000. H. A. Polloyell, Isaac Levi, E. W. Oesper, L. D. Mathis, Paul Hengge.

The Security Bag Co., Lockland, \$300,000. H. W. Nichols, J. Davis, R. L. Black, J. B. Wing, C. R. Walker.

The Dayton Body and Cabinet Co., Dayton, \$50,000. C. C. Breech, D. L. Waggoner, J. Davies, D. C. King, V. B. DeVall.

The Mansfield Ice Co., Mansfield, \$4,000. C. J. Stecker, W. Bortsheller, C. F. Humerick, G. G. Stecker, Julius Weber.

The Taylor Park Land Co., Cleveland, \$100,000. F. S. Krusch, M. S. Robinson, E. E. Bross, A. N. Treening, H. A. Kangesser.

The Sagamore Hills Co., Cleveland, \$1,000. C. A. Alexander, J. H. Schultz, K. T. Siddall, T. M. Dye, Paul Keough.

The Akron Wholesale Produce Association Co., Akron, 1,000. L. O. Weaver, E. H. Wiener, Morris Wiener, M. Goldman, N. M. Greenberger.

The Burton Public Service Co., Burton, \$15,000. E. C. Bliss, G. B. Fox, Theo. Myler, P. W. Merrisman, L. G. Richards.

The Wulff Rim Co., Toledo, \$1,000. T. J. Bailey, E. H. Wulff, P. Rossbach, B. Mallett, G. M. Dean.

The Krause Costume Co., Cleveland, \$50,000. C. Krause, David Yost, Laura Krause, L. M. Yost, T. J. Long.

The Wear-Test Products Co., Cleveland, \$100,000. Isador Grossman, Charles M. Buss, W. A. McAfee, Nettie M. Doebring, M. F. Hanning.

The Napoleon Tool and Machine Co., Napoleon, \$40,000. Fred Ritz, J. W. Johnson, H. F. Eggers, Theodore Daman, Ed. F. Allen.

The Ideal Industrial Co., Cleveland, \$10,000. W. W. Grooms, R. L. Pemetton, Bob Veal, Albert Shaw, C. H. Bronson.

The C. C. Ellenberger Co., Youngstown, \$25,000. C. S. Ellenberger, J. B. Nelson, C. M. Nelson, A. E. Ellenberger, R. J. Nicholson.

The Ohio Victory Oil & Gas Co., Columbus, \$50,000. H. L. Morse, W. E. Fairman, C. N. Osborn, J. H. Arnold, H. W. Ellis.

The Defiance Shippers' Co., Defiance, \$1,500. E. B. Partee, W. H. Haas, E. S. Brechbill, G. E. Kinner, T. C. Elliott.

The Columbus Paint Manufacturing Co., Columbus, \$75,000. A. O. Campbell, W. B. Peters, J. S. Wrinkle, W. L. Beathard, J. E. Campbell.

The Huntington-Immke Co., Cleveland, \$10,000. C. A. Niman, C. M. Buss, A. B. Oakes, H. B. Lindeman, L. A. Pejeau.

The Green-Hocking Oil & Gas Co., McArthur, \$60,000. O. F. Pulcher, D. H. Moore, Henry Sockel, J. T. Foreman, F. P. Magee.

The James C. MacDermott Co., Wellington, \$25,000. J. C. MacDermott, A. P. MacDermott, F. Dale Walthous, L. MacD. Walthour, R. L. Walden.

The Amole Soap Co., Tippecanoe City, \$100,000. H. J. Harshberger, W. C. Staley, A. L. Harshberger, Lou Boyd, J. W. Bowman.

The Templar Akron Motor Car Co., Akron, \$50,000. R. M. Eagon, H. E. Werner, Bernard J. Amer, N. B. Roby, J. B. Sieber.

The Medina Home Co., Medina, \$150,000. W. E. Griesinger, C. J. De-Armitt, D. C. Shepard, H. E. Aylard, F. W. Woods.

The Vogel Electric Co., Akron, \$10,000. L. W. Vogel, E. F. Vogel, H. C. Tinker, J. N. Mullen, C. G. McElheey.

The H. Preston Co., Cincinnati, \$50,000. Ben Wolf, H. J. Wolff, F. Evans, J. F. Cromwell, E. Murdock.

The Fernwood Manufacturing Co., Dayton, \$50,000. C. F. Kuhls, H. C. Kuhls, Jr., R. W. Kuhls, W. J. Kuhls, B. E. Kuhls.

The William Schofield Hardware Co., New Lexington, \$40,000. Wm. Schofield, Fred Clark, W. A. Bogart, B. S. Hill, E. F. Schofield.

The Kemerley-Young Realty Co., Akron, \$40,000. L. A. Kemerley, C. L. Hoffmeier, F. B. Young, H. H. Stehle, B. J. Amer.

The James E. Richards Co., Dayton, \$100,000. J. E. Richards, C. B. Richards, J. E. Richards, Jr., Stella O'Neall, R. K. Landis.

The Universal Steel Co., Cleveland, \$10,000. C. Simon, C. E. Doane, B. C. Doan, F. W. Mettler, Harold H. Burton.

The H. & K. Auto Co., Dayton, \$25,000. F. A. Kline, J. P. Holderman, F. M. Dickes, G. V. Scheible, H. E. Kline.

The Horton Studios Co., Cleveland, \$11,000. W. R. Horton, T. C. Hoffmeyer, R. Tomaso, M. B. Vilas, C. D. Simmons.

The Century Investment Co., Toledo, \$100,000. N. O. Eppstein, T. R. Manton, L. Igdaloff, Tom Polas, I. A. Eppstien.

The Berkie Mortgage and Realty Co., Cleveland, \$50,000. A. Berkowitz, Fannie Berkowitz, Sylvia Berkowitz, J. H. Rosenberg, C. W. Dille.

The Wirls Realty Co., Cleveland, \$5,000. A. N. Wirls, C. V. Wirls, M. Cook, H. M. Singer, G. O. Farquharson.

The Cincinnati Biltwell Tire Co., Cincinnati, \$50,000. D. Ziegler, J. M. Schweitzer, A. C. R. Jones, N. G. Jannitto, Fred Helm.

The S. A. Propst Sales Co., Dayton, \$2,000. S. A. Propst, M. J. Beeghly, E. A. Kimmel, Harry J. Osbun, W. E. Beheer.

The Motor Gas & Fuel Oil Co., Galion, \$60,000. F. W. Biehl, H. H. Harrington, O. C. Methling, H. Pounder, F. Pigman, N. G. Knight, T. F. Harrington, H. Shoup.

The Tiffin Farmers' Exchange Co., Tiffin, \$100,000. Charles Gillig, H. B. Gooding, M. R. Hooper, Arlington Dunn, J. D. Hoffman.

The Block Auto Accessories Co., Cincinnati, \$10,000. C. E. Dornette, George A. Dornette, A. E. Koch, A. E. Auberger, Grace Reinzan.

The Reliance Building Co., Cleveland, \$10,000. M. Mayers, S. F. Davis, H. F. Mayers, E. Schreiber.

The Permanent Tool and Manufacturing Co., Dayton, \$20,000. A. B. Horstman, A. Horstman, J. H. Horstman, E. W. Kramer, C. H. Kramer.

The Economy Stove Co., Greenville, \$75,000. O. Z. Vannoy, H. C. Metzger, Grace Vannoy, St. Clair Metzger, M. M. Metzger.

The Demco Machine Tool Co., land, \$100,000. Ed. Younger, L. M. Sewell, A. J. Pejisa, H. L. Deibel, E. W. McGraw.

The Technical Equipment Co., Cleveland, \$1,500. Orville Smith, A. M. Van Duzer, W. N. Nye, Charles Follett, J. W. Eckelberry.

The Buschle Sons Manufacturing Co., Cincinnati, \$25,000. J. Buschle, Oliver Schaub, I. A. Buschle, R. E. Buschle, F. J. Buschle.

The Edward H. Hart Co., Canton, \$10,000. E. R. Hart, H. C. Weible, L. H. Mory, L. E. Souers, F. E. Mynck.

Increases

The Euclid-10550 Co., Cleveland, \$50,000 to \$150,000.

The Doyle Ship Co., Columbus, \$10,000 to \$15,000.

The International Cemetery Monumental Co., Cleveland, \$20,000 to \$75,000.

The Universal Steel Co., Cleveland, \$10,000 to \$150,000.

The Peoples Bldg. Svgs. Co., of Xenia, Ohio, \$3,000,000 to \$10,000,000.

The Sidney Knitting Mills Co., Sidney, \$150,000 to \$200,000.

The Greene-Embry Co., Cincinnati, \$100,000 to \$125,000.

The Andes Tire and Rubber Co., Cleveland, \$100,000 to \$2,500,000.

The Structural Tool Co., Cleveland, \$300,000 to \$330,000.

The Cleveland Orpheum Amusement Co., Cleveland, \$15,000 to \$65,000.

The Selby Shoe Co., Portsmouth, \$700,000 to \$1,000,000.

The Dille Road Lumber Co., Euclid Village, \$50,000 to \$80,000.

The Eastern Woolen Mills Co., Cleveland, \$25,000 to \$40,000.

The Columbus Body Co., Columbus, \$50,000 to \$100,000.

The Krumroy Construction Co., Akron, \$20,000 to \$100,000.

The City Taxicab and Transit Co., Lima, \$25,000 to \$45,000.

The Prospect Manufacturing Co., Prospect, \$40,000 to \$60,000.

The Burke Motor Co., Springfield, \$9,000 to \$30,000.

The P. & G. Sales Co., Cleveland, \$20,000 to \$100,000.

The Leedle Rosary Co., Springfield, \$20,000 to \$50,000.

The John Mueller Licorice Co., Cincinnati, \$50,000 to \$100,000.

The Drake & Moninger Co., Alliance, \$50,000 to \$200,000.

The Paterson-Leitch Co., Cleveland, \$50,000 to \$150,000.

The Halladay Motor Corporation Co., Attica, \$300,000 to \$1,500,000.

The Jones Gear Co., Cleveland, \$400,000 to \$1,000,000. (all preferred stock).

The Jones Gear Co., Cleveland, \$400,000 to \$1,000,000. (all common stock).

The Defiance Grocery Co., Defiance, \$200,000 to \$250,000.

The Bryan Granite Co., Salem, \$10,000 to \$20,000.

The R. B. White Lumber Co., Newark, \$100,000 to \$125,000.

The Standard Home Co., Masury, \$200,000 to \$500,000.

The C. H. Foote Lumber Co., Cleveland, \$50,000 to \$75,000.

The Republic Knitting Co., Cleveland, \$25,000 to \$100,000.

The Pulaski Farmers Grain Elevator Co., Pulaski, \$10,000 to \$25,000.

The Crescent Realty Co., Cleveland, \$10,000 to \$50,000.

The Akron Electric Sales Co., Akron, \$10,000 to \$50,000.

The Whipp Machine Tool Co., Sidney, \$75,000 to \$100,000.

The Amherst Lumber Co., Amherst, \$50,000 to \$75,000.

The Barshal Co., Cleveland, \$10,000 to \$50,000.

The Niles Lumber Co., Niles, \$25,000 to \$100,000.

The Maynard Coal Co., Columbus, \$500,000 to \$975,000.

The Electric Alloy Steel Co., Youngstown, \$1,500,000 to \$3,000,000.

The Maynard Coal Co., Columbus, \$975,000 to \$2,300,000.

The Leichner and Jordan Co., Portsmouth, \$75,000 to \$125,000.

The Brouse-Skidmore Grain Co., Cincinnati, \$25,000 to \$40,000.

The Northern Ohio Coal Co., Toledo, \$10,000 to \$25,000.

The Hercules Motor Manufacturing Co., Canton, \$1,000,000 to \$1,500,000.

The Citizens Telephone Co., Delaware, \$200,000 to \$250,000.

The Bascom Elevator & Supply Co., Bascom, \$15,000 to \$40,000.

The Rudolph A. Basesta Co., Cleveland, \$10,000 to \$50,000.

The Toledo Metal Products Co., Toledo, \$100,000 to \$200,000.

The Peerless Bread Machine Co., Sidney, \$50,000 to \$250,000.

The Hercules Motor Manufacturing Co., Canton, \$500,000 to \$700,000.

The Association Building Co., Cleveland, \$500.00 to \$410,000.

The Collamer Lumber Co., Cleveland, \$100,000 to \$200,000.

The Cleveland Land & Securities Co., Cleveland, \$250,000 to \$500,000.

The J. E. McNally Lumber Co., Columbus, \$75,000 to \$150,000.

The Cambridge Milling Co., Cambridge, \$20,000 to \$50,000.

The Chas. R. Sargent Co., Cleveland, \$50,000 to \$250,000.

The Atlas Savings and Loan Co., Cleveland, \$500,000 to \$1,000,000.

The Byrne Manufacturing Co., Cleveland, \$25,000 to \$50,000.

The Williams Coal Co., Stuebenville, \$15,000 to \$50,000.

The Charles D. Baker Co., Cincinnati, \$12,000 to \$50,000.

The Neubert-Schroeder Co., Toledo, \$50,000 to \$100,000.

The Pilliod Lumber Co., Swanton, \$25,000 to \$50,000.

The United Associates Co., Toledo, \$50,000 to \$250,000.

The Eagle Tire Co., Cleveland, \$10,000 to \$25,000.

Decreases

The American Envelope Co., West Carrollton, \$500,000 to \$300,000.

The Western Realty Co., Lima, \$50,000 to \$10,000.

The Mountain Distilling Co., Cincinnati, \$120,000 to \$5,000.

The Columbus Tire & Rubber Co., Columbus, \$800,000 to \$400,000.

PUBLIC UTILITIES COMMISSION

1908—In the Matter of the Application of The New York Central Railroad Company, in Regard to Equipment Trust No. Prayer Granted.

(Dated February 18, 1920.)

This day, after due notice to all parties in interest, this matter came on to be heard upon the application of The New York Central Railroad Company, for the consent and authority of the Commission to the execution of an agreement proposed to be entered into between Walker D. Hines, Director General of Railroads, the applicant company and Guarantee Trust Company of New York (or such other trust company as may be designated) as trustee, establishing equipment trust No.—; and to the issuing by the applicant of equipment notes in a principal amount equal to 75 per cent. of the purchase price to the United States of the equipment described in schedule A annexed to the petition herein, but not exceeding a principal amount of fourteen million, eight hundred forty-eight thousand, ten and twenty-five hundredths dollars (\$14,848,010.25), which is 75 per cent. of the maximum purchase price of such equipment as set forth in such schedule, and the delivery thereof to said trustee, to be by it authenticated and delivered to or upon the order of the Director General of Railroads, to reimburse the United States in part for the cost of the said equipment, as authorized and provided by an act of Congress approved November 19, 1919 and mentioned in the petition.

And it appearing to the Commission that said equipment has been ordered and provided by the President of the United States pursuant to authority of an act of Congress approved March 21, 1918, for use upon the lines of the applicant company which proposes to secure the use and ultimately the ownership of said equipment under and pursuant to the terms of said trust agreement, by means of the conditional sale therein provided for; and that the making of said agreement and the issue and delivery of said equipment notes as prayed are reasonably required and necessary for the acquisition by said applicant company of additional property and equipment, to be used and useful in the prosecution of its corporate purposes, and for the extension and improvement of its

facilities, but not for replacements, and the Commission being satisfied that its consent and authority should be granted as prayed, it is therefore

Ordered, That The New York Central Railroad Company be, and it hereby is authorized to execute with Walker D. Hines, Director General of Railroads (or his successor as such) and Guarantee Trust Company of New York (or such other trust company, as may be designated) as trustee, an agreement substantially in the form of the agreement annexed to the petition herein and marked exhibit "B," establishing an equipment trust, to be designated "Equipment Trust No.——;" also to execute and deliver to said trustee, to be by the latter authenticated and delivered or or upon the order of the Director General of Railroads, its equipment notes in a principal amount equal to 75 per cent of the purchase price of the above described equipment but not exceeding fourteen million, eight hundred forty-eight thousand, and ten and twenty-five hundredths dollars (\$14,848,010.25), which sum equals 75 per cent of the maximum price of said equipment as shown by said schedule A, for the reimbursement of the United States for a part of the cost of said equipment described in said schedule A; said equipment notes to be divided into fifteen (15) series, each for an aggregate principal amount equal to one-fifteenth (1-15) of the aggregate principal amount of said notes, and maturing respectively on the 15th day of January of each of the years 1921 to 1935 both inclusive and to bear interest at the rate of six per cent (6%) per annum from the 15th day of January, 1920, payable semi-annually, and to be issued and delivered at par and in all respects according to the provisions of said trust agreement. It is further

Ordered, That the petitioner make verified report to this Commission of the issuance and disposition of said notes within thirty (30) days after the delivery of the same or any part thereof. It is further

Ordered, That this order shall become effective on February 20th, 1920.

*
No. 1909—In the Matter of the Application of The Pittsburgh & Lake Erie Railroad Company, in Regard to Equipment Trust No. Prayer Granted.

(Dated February 18, 1920.)

The finding in this case is the same as No. 1908, published in full in this issue, the amount authorized to issue being \$658,451.25.

No. 1910—In the Matter of the Application of The Toledo & Ohio Central Railway Company, in Regard to Equipment Trust No. Prayer Granted.

(Dated February 18, 1920.)

The finding in this case is the same as No. 1908, published in full in this issue, the amount authorized to issue being \$2,377,-995.00

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No. 1911—In the Matter of the Application of The Kanawah & Michigan Railway Company, in Regard to Equipment Trust No. Prayer Granted.

(Dated February 19, 1920.)

The finding in this case is the same as No. 1908, published in full in this issue, the amount authorized to issue being, \$1,159,-797.00.

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No. 1912—In the Matter of the Application of The Cleveland, Cincinnati, Chicago & St. Louis Railway Company in Regard to Equipment Trust No. Prayer Granted.

(Dated February 18, 1920.)

The finding in this case is the same as No. 1908, published in full in this issue, the amount authorized to issue being, \$5,654,-805.00.

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No. 1913 — In the Matter of the Application of the Wheeling & Lake Erie Railway Company, in Regard to Equipment Trust No. 82. Prayer Granted.

(Dated February 19, 1920.)

The finding in this case is the same as No. 1908, published in full in this issue, the amount authorized to issue being \$4,851,-650.00.

ATTORNEY GENERAL

Under the Provisions of Section 7734, General Code, the Board of Education of a School District May Lawfully contract with the Board of Education of Another District or Districts for the Admission of Its Pupils Into One or More of the Schools of Such Other Districts and the Amount of Tuition for Attendance of Pupils May Be Fixed by the Terms of the Contract Agreed Upon by the Boards of Education of the Several Districts.

Where the Attendance and Amount of Tuition Are Determined by the Terms of a Contract Made Between the Boards of Education of Such Districts, the Provisions of Sections 7736, General Code, and Section 7747, General Code, Are Not Applicable. There is No Requirement in Law that the Amount of Tuition Paid to One Foreign Board of Education Need Be Exactly the Same Amount Paid to Another Foreign Board of Education Where a Contract is Had with More Than One Board.

Where a Board of Education Enters Into a Contract or Contracts with Other Boards of Education for the Tutoring of Its Pupils, and the Schedule Pay for Such Tuition is Later Desired to Be Changed, a New Contract or Contracts Should Be Prepared and Agreed Upon, for the Reason that the Limit of the Liability Resting Upon a Board of Education to Pay a Pupil's Tuition is the Maximum Amount Named in Any of the Board's Tuition Contracts. In Cases Where No Agreement as to Paying the Tuition of Pupils is Entered Into, the School to Be Attended by a Pupil Eligible to High School Can Be Selected by the Pupil Holding a Diploma.

(Opinion 984—Dated February 3, 1920)

Hon. Louis H. Capelle, Prosecuting Attorney, Cincinnati, Ohio:

Dear Sir: Acknowledgment is made of the receipt of your request for an opinion upon the question as to whether the North College Hill board of education can pay an amount to the Cincinnati board of education that is equal to the amount now being paid to the Mt. Healthy board of education for the tutoring of high school pupils of the North College Hill school district. You indicate there are several of the pupils residing in the North College Hill village school district who desire to attend the Cincinnati high school rather than the high school at Mt. Healthy, and the board of education of the North College Hill school district desires to know whether they would be authorized to pay fifty dollars per pupil per school

year to the Cincinnati schools, leaving any additional amount to be paid by the parents of the pupils, the said fifty dollars being the amount that is now being paid to the board of education of the Mt. Healthy school district for the annual tuition of each high school pupil sent from the North College Hill school district.

In reply to our request for further information upon the question of the contract existing between the North College Hill school district and the Mt. Healthy school district, you advise as follows:

"* * * The clerk of the North College Hill village school district advises that he has no record of a formal contract between the Mt. Healthy board and the North College Hill board. The only information that the clerk can furnish me with is a letter dated September 1, 1916, addressed to the clerk of the North College Hill board, advising said board that the tuition for high school pupils would be increased \$5.00 and that it would be necessary to enter into a new agreement. This letter is signed by the clerk of the Mt. Healthy Board. Following this, to-wit, on October 4, 1916, the North College Hill Board of Education passed the following resolution:

'Be it Resolved, by the board of education of the village of North College Hill in regular session this fourth day of October, 1916, that said board enter into contract with the board of education of the village of Mt. Healthy, Ohio, for the enrollment of all grades of said North College Hill School District at a charge of \$3.50 per month or part thereof per pupil attending the first and second grade and \$4.00 per month or part thereof per pupil attending the third and fourth year.'

"I understand that no formal contract has ever actually been entered into, but that since October, 1916, the rates have increased at various times and the board is now paying \$50.00 per school year per pupil for the tutoring of said high school pupils at the Mt. Healthy school."

You indicate that no contract has ever been entered into between the North College Hill board of education and the Mt. Healthy board of education for the tutoring of high school pupils sent from the North College Hill District, but that in 1916 a resolution was passed that the board should enter into a contract upon the terms mentioned in such resolution, as above quoted. Seemingly this contract provided for in the resolution was never made and the resolution carries a series of figures as the amount of tuition to be paid, which has been greatly augmented since that time by various increases in the charge for tuition, which was followed by acquiescence by the North College Hill board of education and not by any contract.

The law contemplates that a board of education desiring to send pupils to another school district should make an agreement or contract with the board of education accepting such pupils, and if the rates are changed at various times the circumstance calls for a new contract and the old rates are discontinued. The board of education of the North College Hill school district should enter into a new contract with the Mt. Healthy board of education and any other board of education, if it cares to do so, authority for such action being found in Section 7734, G. C., which reads as follows:

"The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expenses so incurred shall be paid out of the school funds of the district sending such pupils." (73 v. 243.)

Section 7747, G. C., as amended in 107 O. L., page 625, reads in part as follows:

"The tuition of pupils who are eligible for admission to high school and who reside in village or rural districts in which no high school is maintained, may be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the month."

Section 7750 reads as follows:

"A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma. * * *"

There is no conflict between Section 7734, G. C., *supra*, and Sections 7747 and 7750, just quoted, the former being a statute that is general in its terms and carrying with it the right of a board of education to contract with another board of education on tuition matters on such terms as may be agreed upon. Section 7734, G. C. was formerly Section 4022, Revised Statutes, and was passed upon in the case of Board of Education vs. Board of Education, 50 O. S.,

439, the first and third branches of the syllabus of which is as follows:

"1. The contract authorized by Section 4022, Revised Statutes (now 7734 General Code), for the admission of pupils from one district to the school of another, is an express contract to be made between the boards of education of the two districts.

3. Said section of the statute provides that the board of education may contract for the admission of such pupils, 'on such terms as may be agreed upon by such boards.' This evidently means an express agreement, evidenced by action of the board, and not a mere silent acquiescence."

Attention is also invited to opinion No. 742, appearing at page 1558, Volume 2, Opinions of the Attorney General, 1915. In this opinion the attorney general says, in discussing Section 7734, G. C., *supra*:

"This statute is general in its terms. * * * It seems clear that where one or more pupils residing in a school district have the right to attend an elementary school or high school in another school district and the board of education of the district in which such pupil or pupils reside is compelled to pay the tuition for such attendance, the amount of such tuition must be determined in the manner prescribed by the provisions of Section 7736 General Code, or by the provisions of Section 7747 General Code, as amended. On the other hand, it seems equally clear that where such attendance and the tuition therefor are determined by the terms of a contract made between the boards of education of such districts, the provisions of said Section 7736 General Code, and Section 7747 General Code, as amended, are not applicable.

"I am of the opinion, therefore, * * * that the board of education of a school district may lawfully contract with the board of education of another district for the admission of its pupils into one or more of the schools of such other districts, and that the amount of tuition for such attendance may be fixed by the terms of said contract and agreed upon by the parties thereto."

If North College Hill board of education does not have in force at this time a contract with the Mt. Healthy board of education, a new contract covering the situation under the provisions of Section 7734 should be entered into and, as indicated in both Section 7734 and Section 7750, such contracts can be with more than one board of education, and if the North College Hill board of education desired to send a portion of their pupils to the Mt. Healthy village school district and another portion to the Cincinnati city school district, or any other district, the board of education of the North

College Hill district has ample authority to make the tuition contracts which it deems necessary and on terms to be agreed upon by the boards involved. The discretion of a board of education cannot be successfully attacked as long as such board, in its discretion, is acting within the bounds of the law, and doing those things for which the statutes provide. (See Ohio Law Bulletin, September 29, 1919, *Brannon vs. Board of Education.*)

For its own protection a board of education in a district which does not maintain a high school should have a tuition contract or contracts with another board or boards of education maintaining a high school, because in the absence of any contract the high school pupil holding a diploma can select his own high school to be attended and the board would be liable for the entire tuition charge made by the foreign high school selected by the pupil. But if a board of education has contracted with another board of education for the tutoring of its high school pupils and the pupil does not attend the high school mentioned in the contract, but attends another high school with which no contract exists, then the pupil, while entitled to the same tuition privileges as other pupils, cannot create a liability on his resident board of education greater than the amount appearing in tuition contracts that are in force. Under the provisions of Section 7734 a board of education can make an express contract with another board of education as it sees fit, the amount of tuition to be paid to be the amount agreed upon by the parties to the contract.

Based upon the statutes herein cited and the statement of facts given, it is therefore the opinion of the attorney general:

1. Under the provisions of Section 7734, the board of education of a school district may lawfully contract with the board of education of another district or districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.

2. Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of Section 7736, G. C., and Section 7747, G. C., are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another foreign board of education where a contract is had with more than one board.

3. Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contract. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school can be selected by the pupil holding a diploma.

✽

The Act Creating the Americanization Committee and Vesting It with Authority to Act Until Its Termination on January 1, 1921, a Valid Exercise of the Legislative Power Vested in the General Assembly by Section 1 of Article II of the State Constitution. The Power so Vested in the General Assembly, Where No Federal Question is Involved, is Subject Only to (a) the Veto Power of the Governor, (b) the Power Reserved to the People Under the Initiative and Referendum Provisions of the Constitution (None of Which Powers Were Involved in This Case), and (c) to certain other Provisions of the Same Instrument Which Qualify or Restrict Its Exercise, Which Are Inapplicable to the Present Inquiry.

No. 1019—(Opinion Dated February 25, 1920.)

The Americanization Committee, Columbus, Ohio.

Gentlemen: Hon. O. T. Corson, State Director of your committee, has addressed a communication to this department relative to the constitutionality and effect of an act passed by the 83d general assembly on May 9, 1919, approved by the Governor on June 5, 1919, (108 O. L., Part I, p. 539), and entitled, "An act to provide for the development of Americanization work and to encourage the patriotic education and assimilation of foreign born residents."

Section 1 of the act provides that the joint committee on German propaganda of the senate and house, together with the superintendent of public instruction, shall be continued as an Americanization committee, for the purpose of carrying on the Americanization and patriotic education work begun by the Council of National Defense, and of co-operating with the agencies of the federal government in furthering the study and application of Americanization and patriotic education work in this state.

The duties and authority of the committee are set forth in Sec-

tion 3 of the act substantially as follows: To formulate and promote programs for Americanization and patriotic education work; to co-operate with the federal agencies in the promotion of Americanization and patriotic education; to aid in the correlation of aims and work carried on by local bodies and private individuals and organizations; to study the plans and methods which are proposed or which are in use in such work; to employ such lawful methods as will tend to bring into sympathetic and mutually helpful relations the state and its residents of foreign origin; to protect immigrants • from exploitation and abuse, stimulate their acquisition and mastery of the English language, and to develop their understanding of American government, institutions and ideals, and, in general, to promote their assimilation and naturalization; and, for the purposes above stated, to co-operate with other offices, boards, bureaus, commissions, and departments of the state, and with all public agencies, federal, state and municipal.

The committee is empowered by Section 4 of the act to choose its own chairman, and to employ a director and such assistants as may be necessary, and to define their duties and fix their compensation.

For the purpose of carrying out the provisions of the act, the sum of twenty-five thousand dollars is appropriated out of the moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated. See Section 5.

Section 2 of the act expressly provides that the committee shall terminate its existence January 1, 1921.

The alleged unconstitutionality of this act appears to be based upon the erroneous hypotheses, first, that the general assembly, in providing for the membership of the committee, violated Section 27 of Article II of the State Constitution, which provides that no appointing power shall be exercised by the general assembly, and, second, that the general assembly is without authority to create a committee with power and authority to exist and act after its final adjournment.

(1) Section 27 of Article II of the State Constitution not violated.

The constitutional provision referred to reads as follows:

"The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power

shall be exercised by the general assembly, except as prescribed in this constitution, and in the election of the United States senators; and in these cases the vote shall be taken 'viva voce.' "

In *Gleason vs. Cleveland*, 49 O. S., 431, it was held that the constitutional inhibition was against the appointment of officers by the general assembly, and did not apply to the appointment of members of a committee or commission created for the accomplishment of a particular purpose and whose functions end with the accomplishment of that purpose; and that persons clothed with such temporary functions are not regarded as officers within the meaning of the constitution.

In the opinion, at page 437, the court, after disposing of certain other objections made to the law then under consideration, said:

"But it also seems clear from the previous decisions of this court, that the members composing this commission, are not officers within the meaning of Sec. 27, Art. 2, of the constitution, denying to the legislature the power of appointment to office. *Walker vs. Cincinnati*, 21 Ohio St., 14, 50.

They are created for the accomplishment of a particular purpose—the erection of a monument, and their functions end with the accomplishment of that purpose. It was held in the case just cited, that persons clothed with such temporary functions are not regarded as officers within the meaning of the constitution."

An examination of the act under consideration will disclose that the members of the Americanization Committee are not officers, within the constitutional sense. They have not been vested with any portion of the sovereignty of the state; they are members of a committee created for the accomplishment of a particular purpose, and their functions are but temporary.

No useful purpose will be served by citing and reviewing in this opinion the cases defining the term "office" or "officers," for as *Spear, J.*, so aptly and correctly said in *State vs. Hunt*, 84 O. S., 143, 149, the definitions are multitudinous, not to say multifarious, and so varied that the ingenious mind may find support for almost any proposition relating to the general subject which the necessities of his case may seem to demand. One definition, however, in particular, which seems to have met with general favor, perhaps, is that an office is a public position to which a portion of the sovereignty of the country attaches, and which is exercised for the benefit of the public. Surely, no one will contend that the act involved

in this opinion attempts to clothe the members of the Americanization committee with any portion of the sovereignty of the state.

It follows, therefore, that the general assembly in creating and providing for the membership of the Americanization committee did not violate Section 27 of Article II of the State Constitution.

(2) Existence and authority of Americanization Committee extends until January 1, 1921.

The Americanization committee was created and vested with certain duties and authority by an act duly enacted by the general assembly as a whole, and not by a resolution adopted by the house or senate, or by a joint resolution adopted by both houses.

In *State vs. Guilbert*, 75 O. S., 1, the court held that under the State Constitution, as then in force, neither branch of the general assembly had authority to appoint a select investigating committee for general legislative purposes, and also that the general assembly as a whole was without authority to confer such authority upon a single branch. Since that decision, however, the constitution has been amended. (See Article II, Section 8, adopted 1912), so as to confer authority upon each house to obtain through committees information affecting legislative action under consideration or in contemplation, etc.

State vs. Guilbert, *supra*, does not deny the authority of the general assembly, acting as a whole, and by an act duly enacted, to create or authorize the appointment of a committee for the accomplishment of a particular purpose, and to provide for or designate its membership, and clothe such members with temporary functions extending beyond final adjournment. On the contrary, a careful examination and analysis of the opinion will disclose that it inclines toward the view that if the select committee there involved had been created or authorized by a legislative act instead of by a resolution, the authority of the committee to act after final adjournment would have been sustained. See pages 48, 49 and 50.

In *State vs. Gayman*, 11 C. C. (N. S.), 257, also decided prior to the constitutional amendment of 1912, the authority of an investigating committee appointed under a joint resolution to act after the final adjournment of the general assembly, was directly involved and decided. In the opinion the court apparently draws a distinction between a committee appointed under authority of an act of the general assembly duly enacted under its constitutional authority to legislate, and one appointed under authority of a joint resolu-

tion,—sustaining the authority in the former instance, but denying it in the latter,—as follows:

“An act duly passed by the general assembly is a complete exercise of the power to legislate; but a resolution to investigate for the purpose of further legislation, passed by the same body, is the exercise of a right incident to that power, and if the power itself be surrendered, the incidental right goes with it.

When the general assembly adjourned sine die, its purpose to use the information in aid of legislation could no longer be carried out, and while it could order the information to be transmitted to its successor, it could not form or express a purpose for nor impose its own upon its successor.”

State vs. Gayman, was affirmed by the Supreme Court without report (see 79 O. S., 445), two of the judges concurring “on the sole ground that the committee appointed under the joint resolution had no power to act after the final adjournment of the legislature which could not reconvene of its own motion.”

In my opinion, the act creating the Americanization committee and vesting it with authority to act until its termination on January 1, 1921, is a valid exercise of the legislative power vested in the general assembly by Section 1 of Article II of the State Constitution. The power so vested in the general assembly, where no federal question is involved, is subject only to (a) the veto power of the Governor, (b) the power reserved to the people under the initiative and referendum provisions of the constitution (none of which powers were involved or exercised in this case), and (c) to certain other provisions of the same instrument which qualify or restrict its exercise, which are inapplicable to the present inquiry; and since it is the well-established law of this state that an act of the general assembly will not be set aside or held for naught unless found to be in irreconcilable conflict with the constitution, the act referred to must be sustained. *Mason vs. State*, 58 O. S. 30; *Gum Co. vs. Laylin*, 66 O. S. 578; *Case vs. Dillon*, 2 O. S. 607, and cases therein cited; see also cases digested in 2 Page's Ohio Digest, pp. 2936 et seq.

Whether or not the existence of a committee appointed under authority of Section 8 of Article II of the State Constitution as amended in 1912, to obtain information affecting legislation under consideration or in contemplation, terminates at the final adjournment of the session of the general assembly at which it was created, is not before me for consideration at this time, and no opinion is expressed with respect thereto.

Under the Provisions of Section 9884-4 General Code, the State Board of Agriculture May Withhold its Certificate for Financial Aid When it Appears From the Report of any County Agricultural Society, or From Witnesses or Otherwise, that the Annual Exhibition was not Conducted Along Moral or Agricultural Lines, or was not of Sufficient Educational Value to Justify the Expenditure of the Per Capita Tax.

The Notices Provided for in Section 9884 General Code Must be Filed with the Secretary of Agriculture on or Before the First Thursday After the Second Monday in January in Each Year and the Treasurer of the County is Unauthorized to Pay any Funds to Said County Agricultural Society Unless the Certificate of the Secretary of the State Board of Agriculture is Filed with the County Auditor Certifying to the Fact that Said Reports Have Been Made. "Subsequent Payment", as Used in Said Section, Relates to all Payments to be Made for any Year to a County Society by the County Treasurer After the Expiration of the Date Fixed in Said Section on or Before Which the Reports Mentioned Therein Shall be Made.

Section 9884-4 General Code, Does not Authorize the State Board of Agriculture to Withhold the Payment of any Funds or Appropriations of the County from the County Society. The Certificate Issued by the State Board of Agriculture Under the Provision of Said Section Relates Solely to the Per Capita Tax Provided for in Section 9880 Supra, and the County Auditor is without Authority to Pay Said Per Capita Tax Unless the Certificate is Issued.

An Election of Directors of a County Agricultural Society May be Held at Any Time Fixed by the Board After Proper Notice, Previous to the First Saturday in December, 1920. Where no Such Election has Been Held the Present Incumbents Will Hold Over.

Section 14571 General Code, is Now Inoperative.

Opinion No. 937—(Dated January 15, 1920.)

Hon. N. E. Shaw, Secretary of Agriculture, Columbus, Ohio.

Dear Sir: Your communication of recent date requesting my opinion, reads as follows:

"Section 9880 of the General Code provides for the organization of county agricultural fairs and the means whereby such fairs may receive financial aid.

Section 9884-4 forbids county agricultural fairs from

conducting games of chance, gambling, etc., on their grounds with threat to withhold certificates for per capita tax as provided in section 9880 from those who transgress. Section 9894 provides for county appropriations through county commissioners.

The State Board of Agriculture desires that all Ohio fairs be conducted in conformity to law and rules of said Board, especially as regards section 9884-4. We request an opinion from your department as to the extent of authority of said Board of Agriculture in withholding support (if it becomes necessary to enforce compliance). Can the State Board of Agriculture refuse to issue certificate for per capita tax? Can the State Board of Agriculture have the county appropriation withheld from any fair which violates section 9884-4?

Section 9884-2 specifies that the regular annual election of directors shall not be held later than the first Saturday in December. The President of the Champaign County Agricultural Society writes under date of December 11, 1919, 'We have been proceeding here under a custom that has prevailed from time immemorial of holding an election the last Saturday in January—under the new law passed by the legislature a new order of things is laid out, but we have never got the advanced sheets and consequently knew nothing of the law until within the last few days. What we want you to do is to advise us exactly what we should do in the way of elections under the circumstances.'

We will be pleased to have your opinion on this situation that we may advise accordingly.

Section 9884, the closing part 'No subsequent payment shall be made from the county treasury unless a certificate be presented to the county auditor from the secretary of agriculture showing that such reports have been made.'

Give interpretation of this paragraph.

Section 14571—what is present status?"

Sections 9880 and 9884-4 which are pertinent to your first inquiry, are as follows:

"Sec. 9880. When thirty or more persons, residents of a county organize themselves into a county agricultural society, which adopts a constitution and by-laws, selects the usual and proper officers, and otherwise conducts its affairs in conformity to law, and the rules of the state board of agriculture, and when such county society has held an annual exhibition in accordance with sections 9881, 9882 and 9884 of the General Code, and made proper report to the state board, then upon presentation to the county auditor, of a certificate from the president of the state board attested by the secretary thereof, that the laws of the state and the rules of the board have been complied with, the county auditor of each

county wherein such agricultural societies are organized, annually shall draw an order on the treasurer of the county in favor of the president of the county agricultural society for a sum equal to two cents to each inhabitant thereof, on the basis of the last previous national census. The total amount of such order, shall not exceed one hundred per cent of the amount paid in regular class premiums, and shall not in any county exceed two cents for each inhabitant as aforesaid or the sum of eight hundred dollars, and the treasurer of the county shall pay it."

"Sec. 9884-4. County agricultural societies shall not sell or grant to any person or persons, or permit in any manner, the privilege of selling, dealing, or bartering in spirituous, vinous or malt liquors, allow, or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, in or about any building or anywhere on its fair-grounds, at any time. If it be shown from the report of any county agricultural society, from witnesses or otherwise, that the annual exhibition held by such society was not conducted along moral or agricultural lines or was not of sufficient educational value to justify the expenditure of the per capita tax as provided by section 9880 of the General Code, the certificate for such financial aid may be withheld by the state board of agriculture."

Under the provision of section 9884-4 you are advised that the State Board of Agriculture may withhold its certificate for financial aid when it appears from the report of any county agricultural society, or from witnesses or otherwise, that the annual exhibition was not conducted along moral or agricultural lines, or was not of sufficient educational value to justify the expenditure of the per capita tax. Inasmuch as the language of the statute is not mandatory, it follows that the State Board of Agriculture may use its discretion as to whether it will withhold the certificate in a given case. Also the facts of each case must determine whether under the provisions of said section the State Board of Agriculture is justified in withholding the said certificate; that is to say, it must be established in the manner provided that the annual exhibition was not conducted along moral or agricultural lines, or was not of sufficient educational value to justify the expenditure. It is evident that it was the intent of the legislature to enable the State Board of Agriculture to withhold said certificate in case a county board of agriculture grants permits in violation of the provisions of said statute, and for the other reasons therein mentioned.

Your fourth inquiry will next be considered. Section 9884,

upon a part of which you desire an interpretation, provides as follows:

"County societies shall publish annually an abstract of the treasurer's account, in a newspaper of the county, and make a report of their proceedings during the year. Also make a synopsis of the awards for improvement in agriculture and household manufactures which shall be made in accordance with the rules and regulations of the state board of agriculture, and be forwarded to the secretary of agriculture on or before the first Thursday after the second Monday in January of each year. No subsequent payment shall be made from the county treasury unless a certificate be presented to the county auditor, from the secretary of agriculture showing that such reports have been made."

Said section requires that the notices provided for therein shall be filed with the Secretary of Agriculture on or before the first Thursday after the second Monday in January of each year, and the treasurer of the county is unauthorized to pay any funds to said county society unless the certificate of the Secretary of the State Board of Agriculture is filed with the county auditor certifying to the fact that said reports have been made. "Subsequent payment" as used in the paragraph to which you refer, relates to all payments to be made for any year to a county society by the county treasurer after the expiration of the date fixed in said section on or before which the reports mentioned therein shall be made. However, this section being passed April 17, 1919, the first report shall be made in January, 1920, and said section does not apply to payments made by the county treasurer prior to the date of filing the first report.

Replying to your second inquiry, you are advised that section 9884-4 does not authorize the State Board of Agriculture to withhold the payment of any funds or appropriations of the county from the county society. The certificate issued by the State Board of Agriculture under the provisions of said section relates solely to the per capita tax provided for in section 9880 supra, and the county auditor is without authority to pay said per capita tax unless the certificate is issued. Under this section said certificate should be issued by the President and attested by the Secretary.

On the other hand, in so far as the county appropriations are concerned, the certification is not required, and it shall be the duty of the county treasurer to pay the appropriation of the county to said county society upon the order of the county auditor, provided that the Secretary of the State Board of Agriculture has issued his

certificate to the county auditor to the effect that said society has made the proper reports as provided in section 9884.

Section 9884-2 which is pertinent to your third question, reads as follows:

"The board of directors shall consist of at least eight members, and the county agent and county school superintendent may be members ex-officio. The terms of office shall be determined by the rules of the state board of agriculture. Any vacancy, caused by death, resignation, refusal to qualify, removal from county, or other cause, may be filled by the board until the next annual election when a director shall be elected for the unexpired term. The annual election of the directors shall be by ballot at time and place fixed by the board, provided, however, that this election shall not be held later than the first Saturday in December. The secretary shall give notice of the director's election for three weeks prior to the holding thereof, in at least two newspapers of opposite politics, and of general circulation in the county, or by letter mailed to each member. Only persons holding membership certificates at the close of the fair, or at least fifteen calendar days before the date of election, as may be fixed by the board of directors, shall be entitled to vote, unless such election is held during the time of the holding of the annual county fair. If the said election is held on the fairgrounds during the continuance of the county fair, then all persons holding membership certificates of the date and hour of the election shall be entitled to vote. When the election is to be held during the continuance of the annual county fair, notice of such election must be prominently mentioned in the premium list, in addition to the notice required in newspapers. The terms of office of the retiring directors shall expire, and that of the directors-elect shall begin not later than the first Saturday in January of each year."

The section is explicit in its provisions that the annual election of the directors of the county society shall not be held later than the first Saturday in December. It is evident that the Board to which you refer cannot now comply with the law relative to the time at which its annual election shall be held, and there can be no legal election for the year 1919. However, it is a well established rule that where there is no election held, that the present incumbents hold over until their successors are elected and qualified, which rule undoubtedly would apply in this case. There is nothing in the law designating the time when the election must be held, except that there must be three weeks notice given prior thereto, and must not be held later than the first Saturday in December.

It would therefore seem that an election may be legally held at any time fixed by the Board after proper notice, previous to the first Saturday in December, 1920. In the meantime, the present incumbents will hold over until their successors are properly elected and qualified.

In your fifth question you inquire as to the status of section 14571, which provides as follows:

"When a county society in a county containing a city of second grade of the first class has purchased or leased for a term of not less than twenty years, real estate as a site whereon to hold fairs, or when the title of the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings the county commissioners may if they think it for the interests of the county and society, pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site or either of them as is paid by such agricultural society or individuals for such purpose or either of them, and such commissioners may levy a tax upon all the taxable property of the county sufficient to meet the provisions of this section."

This act was passed March 8, 1889 (86 O. L. 69) and was originally section 3702a of Bates' Revised Statutes. It was intended to apply to counties containing "cities of the second grade of the first class." Section 1, Article XVIII of the Amended Constitution of 1912 provides as follows:

"Sec. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law."

Inasmuch as there are now no cities of the second grade of the first class in Ohio, it is believed that Section 14571 General Code is inoperative.

SUPREME COURT

MOTION DOCKET

10358—The City of Xenia v. H. E. Schmidt. Motion for an order directing the Court of Appeals of Greene county to certify its record. Overruled.

10364—John H. Coss v. The Public Utilities Commission of Ohio. Motion by defendant to dismiss petition in error in cause No. 16480 on the general docket. Overruled.

10365—Earl C. Smith et al., as Board of Education, etc. et al. v. C. C. Crawford, County Supt., et al. Motion for an order directing the Court of Appeals of Morrow county to certify its record. Overruled.

10371—Joseph E. Fisher et al. v. The Hancock County Board of Education et al. Motion for an order directing the Court of Appeals of Hancock county to certify its record. Overruled.

10376—Elva Loney v. W. W. Walkey, Admr., et al. Motion for an order directing the Court of Appeals of Knox county to certify its record. Sustained.

10392—D. S. Snider, Exr., v T. L. Rollins. Motion for an order directing the Court of Appeals of Coshoc-ton county to certify its record. Sustain its record. Overruled.

10397—The Cincinnati Union Stockyard Co. v. Moses F. Brown. Motion for an order directing the Court of Appeals of Hamilton county to certify its record.

10398—The Cincinnati Union Stockyard Co. v. Moses F. Brown. Motion by plaintiff to stay injunction in cause No. 16527 on the general docket. Overruled.

10399—The Village of Euclid et al. v. Camp Wise Assn. Motion for an

order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

10400—The Motch & Merryweather Machinery Co. v. The Sidney Machine Tool Co. Motion for an order directing the Court of Appeals of Shelby county to certify its record. Overruled.

10403—The Cincinnati Union Stockyard Co. v. Moses F. Brown. Motion by defendant to dismiss petition in error in Cause No. 16527 on the general docket. Sustained.

10404—Jacob Edinger v The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Hamilton county. Overruled.

10406—H. E. Schmidt v. City of Xenia. Motion for an order directing the Court of Appeals of Greene county to certify its record. Overruled.

10407—Purrill D. Trepanier v. The T. & O. C. Ry. Co. Motion by plaintiff to dispense with printing record in cause No. 16514 on the General Docket. Sustained.

10409—James Plagakis v. City of Ashtabula et al. Motion for an order edirecting the Court of Appeals of Ashtabula county to certify its record. Overruled.

GENERAL DOCKET

15673—The Ashtabula Gas Co. v. The Public Utilities Commission of Ohio et al. Public Utilities Commission. Order reversed. Cause remanded.

16203—Jones Drake v. The City of East Cleveland. Cuyahoga. Judgment.

16346—George H. Phelps on behalf of the City of Findlay v. The Logan Natural Gas & Fuel Co. et al. Hancock. Judgment affirmed.

SYLLABI OF REPORTED CASES

No. 16203—Jones Drake v. The City of East Cleveland. Error to the Court of Appeals of Cuyahoga county.

MERRELL, J.

1. The obligation of a municipality to keep its public ways in a reasonably safe condition for public travel, exists with respect to such persons, as travel the ways in the usual and ordinary modes, and does not extend to undirected and uncontrollable travel, such as a team of horses running away in the absence of its driver. The municipality is not reasonable for injury sustained by a person upon the vehicle involved in such runaway, if such injury to him results from the uncontrolled action of the team in leaving that part of the public way which is reasonably adequate and safe for travel.

2. Where a two-horse delivery truck, which had been standing at the curb on that side of a public, city street, fifty-four feet wide, which was paved to a width of thirty-four feet and for that space in a condition of reasonable safety for travel, was carried, in the absence of the driver, by the horses becoming frightened and uncontrollable, across the street into a narrow trench left open in that portion of the street which was in the progress of remaking, and the plaintiff, stationed in the rear of the truck, was injured by being thrown to the ground when the wheels of the truck dropped into the trench, the proximate cause of the plaintiff's injury was the running away of the horses and not the negligence of the city in leaving the trench open and unguarded.

Judgment Affirmed.

Jones, Johnson and Wanamaker, JJ, concur.

No. 15673—The Ashtabula Gas Co. v. The Public Utilities Commission of Ohio, The City of Ashtabula et al. Error to the Public Utilities Commission.

JOHNSON, J.

Where a minimum charge for service to be rendered is made or prohibited by the ordinance under which a public utility is operated, the utility is not authorized to make a readiness to serve charge to be paid in addition to the just and reasonable rate fixed for the rendering of the service.

Order affirmed.

Nicholas, C. J., Wanamaker, Matthias, Robinson and Merrell, JJ., concur.

No. 16440—The State, ex rel. Everett V. Spaulding, v. A. E. Baldwin. Error to the Court of Appeals of Delaware county.

JONES, J.

At the November, 1918, election W. was elected county treasurer for a term of two years beginning on the first Monday in September, 1919. On the 19th day of December, 1918, W. died, having meanwhile given no official bond. Thereupon the county commissioners appointed S. as county treasurer for the term to which W. was elected. In a contest between B., a hold-over incumbent, and S the appointee of the commissioners.

Held. The appointment of S. was valid; that, under the provisions of Section 2634, General Code, a vacancy occurred in said office which the Commissioners were empowered to fill.

Judgment reversed.

Matthias, Johnson, Wanamaker, Robinson and Merrell, JJ., concur. Nichols, C. J., not participating.

SECRETARY OF STATE

NEW CORPORATIONS

The Bolivar Erie Co., Cleveland, \$300,000. Geo. Hale, Clarence Hale, J. Paul Thompson, E. K. Curtiss, W. W. Hole.

The Tri-City Gas & Oil Co., E. Liverpool, \$10,000. J. G. Strause, F. W. Coe, C. R. Logan, C. M. Turk, T. R. O'Hanlon, E. Tatgenhorst.

The Square Deal Store Co., Fremont, \$100,000. S. M. Fronizer, M. Prior, Mary Prior, H. C. Plagman, Joe Zeigler.

The R. and R. Marine Supply Co., Ashtabula, \$10,200. J. A. Schultz, T. C. Robinson, F. L. Leckie, K. Wing, T. H. Duncan.

The Lorain Machine & Auto Co., Lorain, \$230,000. F. S. Naylor, J. E. Regal, C. W. Becker, E. F. Cheethal, R. Alexander.

The American Refrigeration Manufacturing Co., Toledo, \$100,000. R. T. Garrison, R. V. Phillips, E. S. Damon, L. W. Hunt, E. D. Camper.

The Collateral Investment Co., Cleveland, \$50,000. H. P. Fetterman, R. Blum, Jos. Apple, Jacob Fetterman, B. Kuth.

The Fast Paint & Varnish Co., Cincinnati, \$10,000. H. E. Fast, I. C. Wadsworth, J. S. Kilduff, C. L. Hoping, C. O. Andress.

The Maynard Polish and Slavish Co-operative Co., Maynard, \$15,000. A. Remar, P. Swiec, B. Tolko, J. Muszynski, J. Mutryka.

The Victory Cabinet Co., Cincinnati, \$50,000. F. N. Roberts, E. G. Kavanaugh, G. E. Kavanaugh, R. Black, R. Pope.

The Henninger Plumbers Supply Co., Akron, \$50,000. R. I. Henninger, J. L. Henninger, W. G. Cady, Edith B. Henninger, Vira Cady.

The Circuit Film Co., Cincinnati, \$50,000. B. L. Heidingsfeld, I. Lisbon, B. G. Bruce, E. J. Babbitt, A. B. Chisholm.

The Central Factory District Co., Cleveland, \$200,000. J. P. Lamb, E. A. Foote, E. Bushnell, R. C. Wheeler, A. R. Manning Jr.

The Lyric Theatre Co., Toledo, \$100,000. W. V. Prentice, A. R. Prentice, Mary Reed, Maud Yeisley, Orville G. Yeisley.

The Liehenseder Hydropatic Sanitarium & Hospital Co., Cleveland, \$50,000. T. F. Foote, J. E. Miller, E. P. Leihenseder, J. J. Section, H. Lais, C. J. Miller, G. Kavran.

The Ludlow Realty Co., Dayton, \$400,000. Adam Schantz, Wm. E. Schantz, Geo. W. Ozias, J. Heilman, Martin E. Diehl.

The Approved Securities Co., Cleveland, \$1,200. F. A. Sherrer Jr., Rees H. Davis, Fred J. Young, M. Sainsbury, H. Rodgers.

The Standard Building Materials Co., Cleveland, \$50,000. J. H. Mellen, W. B. L. Lemmon, V. J. Terrell, A. F. Counts, Paul Blasie Jr.

The Toledo Pure Beverage Co., Toledo, \$50,000. J. M. Morgan, A. L. Conn, E. L. Blue, C. W. Owen, M. R. Martin.

The Barker-Weed-Laughlin Co., Cleveland, \$5,000. A. M. Barker, M. E. Weed, A. E. Laughlin, B. A. Newton, R. H. Barker.

The Southern Home Building Co., Cleveland, \$50,000. J. P. Kalino, P. V. Kalino, J. P. Kubes, Peter P. Hasek, F. J. Jirka.

The Hovis-Preston Electric Co., Canton, \$25,000. C. E. Hovis, M. M. Grosjean, H. E. Hunker, D. E. Kramer, C. J. Bolander.

The Greene Township Oil Co., Logan, \$15,000. C. C. Lyon, E. F. Steinhoff, J. A. Keller, E. M. Eberst, C. F. Brandt.

The Potter Motor Equipment Co., Lima, \$30,000. L. L. Potter, M. Austin Potter, M. B. Potter, I. M. Potter, E. T. Lippincott.

The Liberty-Lincoln Co., Cleveland, \$50,000. C. J. Jobson, D. G. Henderson, W. Hunter, G. M. Colches, R. R. Hawkins.

The Automatic Thread Saving Machine Co., Cleveland, \$50,000. D. R. Warner, J. A. Cline, H. M. Sterling, G. O. Smith, W. T. Smith.

The S. H. Vehicle Co., Cleveland, \$100,000. J. P. Kalina, J. Holan, F. Simek, A. Hauser, Jos. Vlasak, V. Kadlec.

The Medina Cash Store Co., Medina, \$50,000. W. H. Sipher, H. S. Koppes, C. W. Carlton, H. R. Calvert, F. M. Sedgwick.

The Excelsior Oil and Grease Co., Cleveland, \$10,000. M. J. Grossman, S. N. Weitz, H. Pott, B. H. Chandler, F. B. Fishman.

The McLean Securities Co., Cleveland, \$10,000. J. A. Elden, F. W. McLean, C. H. Warner, H. F. Pankhurst, D. Gould.

The Lima Battery Service Co., Lima, \$10,000. J. B. Richards, A. L. Richards, R. Richards, D. D. Aydelotte, A. Adyelotte.

The A. B. C. Appliance Co., Cleveland, \$30,000. J. O. Singleton, C. Locher, C. Carroll, F. W. Green, L. Petrach.

The Franwick Development Co., Cleveland, \$1,000. L. R. Alfele, F. Leichtman, G. Glassner, M. Elefant, J. L. Weinberg.

The Weikle Realty Co., Mingo Junction, \$20,000. H. Weisberger, E. A. Klein, M. Gelb, F. A. Rueggeberg, W. D. Rosenberg.

The Huron Valley Light & Power Co., Shelby, \$50,000. A. C. Morse, J. A. Root, P. H. Root, C. E. Heath, G. A. Fareon.

The Guardian Securities Co., Akron, \$15,000. V. D. Lidyad, L. C. Powell, R. F. Body, R. N. Shafer, A. D. Martin.

The J. H. Goldcamp Co., Lancaster, \$175,000. J. H. Goldcamp, F. F. Goldcamp, J. A. McCauley, Ed. Spires, T. Brown.

The A. M. Allen Auto Electric Co., Akron, \$50,000. A. M. Allen, A. L. Koontz, Adam Geidal, C. A. Rukamp, W. D. Lemon.

The Layne-Ohio Co., Akron, \$100,000. J. H. Harmon, C. W. McColister, R. J. Stout, James Ness, M. L. Freeman.

The Victor Improvement Co., Cleveland, \$20,000. J. M. Ulmer, J. M. Berne, A. J. Schanfarber, B. D. Gordon, E. L. Mueller.

The Home Industries Financing Co., Cincinnati, \$50,000. L. Turner, R. Hughes, W. C. Spencer, A. R. Georgi, J. I. Parker.

The Shaffer & Son Co., Akron, \$50,000. J. Shaffer, P. C. Shaffer, F. B. Burch, O. E. Wolf, B. M. Skelton.

The Profit Sharing Realty Co., Cleveland, \$5,000. J. J. Fried, A. Fried, E. Fried, D. Fried, M. Youtz.

The Thew Shovel Co., Lorain, \$1250. J. H. Watson, Jr., M. C. Byrnes, J. T. Schott, B. E. Robertson, M. C. Myers.

The Inter-State Apiaries Co., Columbus, \$15,000. E. J. Walter, J. S. Hine, H. L. D. Dond, E. W. Long, E. Chenault.

The McDonald Auto Supply Co., Columbus, \$25,000. Chas. McDonald, W. G. Kitselman, John Malcolm, J. S. McDonald, M. T. McDonald.

The Duvall Osborne Co., Akron, \$25,000. C. H. Osborne, L. W. Ducall, L. J. Myers, G. Russell, F. H. Lahmer.

The Frank E. Kirby Co., Mt. Vernon, \$25,000. F. E. Kirby, T. E. Auskings, J. A. Lamson, G. R. Auskings, Lyda Kirby.

The La Fayette Motor Sales Co., Cincinnati, \$25,000. F. J. Santry, L. J. Blunder, R. H. Faulkner, C. B. Bradford, A. R. Hoffman.

The New-Seit Tire Co., Dayton, \$5,000. L. J. Newbauer, L. G. Seitz, P. C. Spring, J. C. Spring, F. F. Korgler.

The Ohio Valley Electric Co., Steubenville, \$10,000. H. F. Strong, H. C. Myers, A. Tonard, A. D. Beckett, R. L. Welch, T. D. Douglas.

The Wellington Motors Co., Wellington, \$25,000. J. C. MacDermott, A. P. Mac Dermott, F. D. Walthour, L. Mc D. Walthour, R. L. Walden.

The W. A. Henderson Co., Logan, \$50,000. W. A. Henderson, I. M. Henderson, C. Shauffer, W. D. Henderson, I. B. Francis.

The West Park Engineering and Erection Co., Cleveland, \$50,000. E. I. Carnes, J. A. Nieding, W. Richmond, J. H. Frank, M. E. Evans.

The Portsmouth Oil Co., Portsmouth, \$50,000. G. W. Vandervort, R. Calvert, T. K. Brushart, G. S. Monroe, J. T. Micklethwait.

The Zeman Iron Works Co., Cleveland, \$50,000. Mathew Zeman, M. T. Zeman, L. R. Zeman, O. M. Zeman, M. Zeman.

The Ohio General Motors Truck Co., Cleveland, \$125,000. W. D. Meals, C. S. Reed, W. K. Gardner, H. H. Gorman, M. L. Esch.

The Elyria Merrill System Co., Elyria, \$30,000. J. H. Thompson, F. C. Andrus, S. G. Andrus, Geo. D. Nicholas, Jr., Chad. Edwards.

The Seaman Building Loan & Savings Association, Seaman, \$30,000. I. M. Wickerhan, J. J. Davis, C. C. Jamison, C. E. Blummer, E. C. Zimmerman.

The Berryhill Nursury Co., Springfield; \$55,000. E. L. Shuey, E. L. Shuey Jr., M. B. Chase, W. R. Nelson, G. A. Raup.

The Velvet Ice Cream Wheeling Co., Cleveland; \$100,000. W. T. Kinder, H. A. Martin, J. P. Wood, W. B. Cockley, T. H. Jones.

The United States Mortgage Co., Cleveland; \$250,000. F. P. Gaffney, O. W. Schuerman, W. Sherman, J. M. Hauck, J. E. Kevan.

The Larowe Milling Co., Rossford; \$800,000. S. Z. Kaplan, S. J. Hiett, C. A. Herbert, P. R. Taylor, A. C. Ruihley.

The Youngstown Scrap Iron & Metal Co., Youngstown; \$200,000. F. Sherman, L. Schuler, C. Sherman, R. B. Wilson, F. R. Hahn.

The Lewis Manufacturing Co., Cleveland; \$17,500. W. S. Lewis, J. C. Murray, J. K. Bole, W. W. Roberts, A. H. Snyder.

The Frank Oil and Gas Co., Cleveland; \$25,000. L. S. Mills, H. Cope-land, F. C. Gregg, F. R. Merchant, A. G. Kuehn.

The Geneva Oil and Gas Co., Geneva; \$10,000. H. C. Eastman, R. A. Gilbert, D. P. Wright, B. D. Bartholomew, John M. Vian.

The Wooster Oil & Gas Co., Akron; \$60,000. N. O. Mather, P. R. Miller, J. M. Rowley, M. A. Clark, L. S. Byers.

The South Amherst Co., S. Amherst; \$100,000. G. D. Siddall, J. P. Dempsey, J. P. Struges, R. E. Kouba, G. F. Decker.

The Paddock Coal Co., Marion; \$5,000. H. C. Paddock, E. G. Paddock, F. L. Carhart, B. Brashare, Henry C. Miller.

The Franklin Home Building Co., Franklin; \$10,000. J. S. VanHorne, W. C. Anderson, R. E. LeRoy, Katherine H. Anderson, B. P. Blair.

The Gold Medal Oil Co., Cincinnati; \$30,000. I. Meyerfeld, J. B. Menke, Jr., W. A. Geoghegan, R. Manogue, A. J. Frieberg.

The Glenwood Engineering Co., Cleveland; \$200,000. R. L. Queisser, B. J. Cline, H. E. Shinmin, J. L. Vaughan, C. L. Blatz.

The West Park Motor Sales Co., West Park; \$50,000. L. S. Mills, C. D. Kopp, C. G. Gilbert, E. C. Schwan, F. C. Gregg.

The Davies & Griffiths Co., Kenmore; \$50,000. F. A. Henry, R. E. Roehm, G. M. Roudsbuch, W. H. Seagrave, N. I. Young.

The Gallagher-Beck Co., Uhrichsville; \$50,000. H. E. Beck, W. P. Greenlee, M. M. Harvey, W. R. Gallagher, L. H. Hartman.

The Hardware Realty & Investment Co., Cleveland; \$50,000. S. Horwitz, W. K. Stanley, Earl LeFever, F. B. Draeger, M. A. Friedman.

Increases

The Akron Tile and Fireplace Co., Akron; \$10,000 to \$30,000.

The J. R. Greenlee Co., Bellaire; \$25,000 to \$50,000.

The Master Tire & Rubber Co., of Dayton, Ohio; \$300,000 to \$1,000,000.

The Geyler Furniture Manufacturing Co., Hillsboro; \$25,000 to \$60,000.

The Youngstown Flag & Decorating Co., Youngstown; \$10,000 to \$50,000.

The Cleveland Second Mortgage Co., Cleveland; \$25,000 to \$100,000.

The Lake Lumber Co., Newark; \$30,000 to \$50,000.

The Ironton Hotel Co., Ironton; \$250,000 to \$350,000.

The J. A. Moffet Co., Cleveland; \$10,000 to \$50,000.

The P. Smith Sons Lumber Co., Newark; \$50,000 to \$150,000.

The Ponticos Ice Cream & Candy Co., Cincinnati; \$5,000 to \$50,000.

The Farmers & Merchants Telephone Co., Paris; \$30,000 to \$40,000.

The Lorain County Savings & Trust Co., Elyria; \$200,000 to \$250,000.

The Caskey-Dupree Manufacturing Co., Marietta; \$100,000 to \$300,000.

The Fruth Hardware Co., Fostoria; \$15,000 to \$50,000.

The Hamilton Brokerage Co., Columbus; \$1200 to \$300,000.

The Municipal Savings and Loan Co., Cleveland; \$200,000 to \$1,000,000.

The J. E. Mahaffey Furniture Co., Canton; \$12,000 to \$45,000.

The Standard Electric Tool Co., Cincinnati; \$40,000 to \$70,000.

The Metropolitan Transfer Co., Cleveland; \$100,000 to \$150,000.

The Eagle Tire Co., Cleveland; \$10,000 to \$25,000.

Decreases

The Windemere Transfer and Moving Co., Cleveland; \$75,000 to \$10,000.

PUBLIC UTILITIES COMMISSION

No. 1922—In the Matter of the Application of The Ann Arbor Railroad Company for and Order Authorizing the Issuing of \$862,502.00 Face Amount of Equipment Gold Notes, Series of 1921. of said The Ann Arbor Railroad Company. Prayer Granted.

(Dated February 24, 1920)

This day, (it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidences submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application of The Ann Arbor Railroad Company for the consent and authority of the Commission to the execution of an agreement proposed to be entered into between Walker D. Hines, Director General of Railroads, the applicant company and the Guaranty Trust Company of New York (or such other trust company as may be designated) as trustees, establishing Equipment Trust No. 1; and to the issuing by the applicant of equipment notes in a principal amount equal to the purchase price to the United States of the equipment described in the petition herein, but not exceeding a principal amount of eight hundred sixty-two thousand, five hundred and two dollars (\$862,502.), which is the maximum purchase price of such equipment as set forth in said petition, and the delivery thereof to said trustee, to be, by it, authenticated and delivered to or upon the order of the Director General of Railroads, to reimburse the United States for the cost of said equipment, as authorized and provided by an Act of Congress, approved November 19, 1919, and mentioned in the petition.

And it appearing to the Commission that said equipment has been ordered and provided by the President of the United States pursuant to authority of an Act of Congress, approved March 21, 1918, for use upon the lines of applicant company, which proposes to secure the use and, ultimately, the ownership of said equipment under and pursuant to the terms of said agreement, by means of the conditional sale therein provided for; and that the making of

said agreement and the issue and delivery of said equipment notes as prayed, are reasonably required and necessary for the acquisition by said applicant company of additional property and equipment, to be used and useful in the prosecution of its corporate purposes, and for the extension and improvement of its facilities, but not for replacements, and the Commission being satisfied that its consent and authority should be granted, as prayed, it is therefore,

Ordered, That said The Ann Arbor Railroad Company be, and hereby it is authorized to execute with Walker D. Hines, Director General of Railroads (or his successor as such) and Guaranty Trust Company of New York (or such other trust company as may be designated) as trustee, and agreement substantially in the form of the agreement annexed to the petition herein and marked "Exhibit No. 1," establishing an equipment trust, to be designated "Equipment Trust No. 1;" also to execute and deliver to said trustee, to be, by the latter, authenticated and delivered to or upon the order of the Director General of Railroads, its equipment notes in a principal amount equal to the purchase price of the above designated equipment, but not exceeding eight hundred, sixty-two thousand, five hundred and two dollars (\$862,502.00), which is the maximum purchase price of said equipment as set forth in the petition herein, for the reimbursement of the United States for the cost of said equipment, so described as aforesaid; said equipment notes to be divided into fifteen (15) series, each for an aggregate principal amount to one-fifteenth ($1/15$) of the aggregate principle amount of said notes, and maturing respectfully on the fifteenth day of January of each of the years 1921 to 1935, both inclusive, and to bear interest at the rate of six per cent. (6%) per annum from the fifteenth day of January, 1920, payable semi-annually, and to be issued and delivered at par and in all respects according to the provisions of said trust agreement. It is further

Ordered, That the applicant make verified report to this Commission, of the issuance and disposition of said notes, within thirty (30) days after the delivery of the same or any part thereof. It is further

Ordered, That this order shall become effective on February twenty-fifth, 1920.

And it appearing that the applicant, said The Ann Arbor Railroad Company, now has mortgage bonds and notes issued and outstanding in excess of its issued and outstanding capital stock, the Commission does further find and hereby orders, that the

issue and disposition of said equipment trust notes in excess of applicant's issued and outstanding capital stock be, and hereby they specifically are consented to, authorized and approved.

*

No. 1921—In the Matter of the Application of The Hocking Valley Railway Company in Regard to Equipment Trusts Nos. 32 and 32-A Prayer Granted.

(Dated February 24, 1920)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard upon the application of The Hocking Valley Railway for the consent and authority of the Commission to the execution of two certain agreements proposed to be entered into between Walker D. Hines, Director General of Railroads, the applicant company and the Guaranty Company of New York (or such other trust company as may be designated) as trustee, establishing Equipment Trusts Nos. 32 and 32-A; and to the issuing by the applicant of equipment notes, under Equipment Trust No. 32 in a principal amount equal to the purchase price to the United States of the equipment described in Schedule A annexed to the petition herein, but not exceeding a principal amount of one million, three hundred seventy-two thousand, five hundred dollars (\$1,372,500.00), and, under Equipment Trust No. 32-A in a principal amount equal to the purchase price to the United States of the equipment described in Schedule B annexed to the petition herein, but not exceeding a principal amount of one million, six hundred seventeen thousand, one hundred dollars (\$1,617,100.00), which sums represent the maximum purchase price of such equipment, as set forth in said schedules, and the delivery thereof to said trustee, to be, by it, authenticated and delivered to, or upon the order of the Director General of Railroads, to reimburse the United States for the cost of said equipment, as authorized and provided by an act of Congress, approved November 19, 1919, and mentioned in the petition.

And it appearing to the Commission that said equipment has been ordered and provided by the President of the United States pursuant to authority of an Act of Congress, approved March 21, for use upon the lines of the applicant company, which proposes to secure the use and, ultimately, the ownership of said

equipment under and pursuant to the terms of said trust agreements, by means of the conditional sales therein provided for; and that the making of said agreements and the issue and delivery of said equipment notes as prayed, are reasonably required and necessary for the acquisition by said applicant company of additional property and equipment, to be used and useful in the prosecution of its corporate purposes, and for the extension and improvement of its facilities, but not for replacements, and the Commission being satisfied that its consent and authority should be granted as prayed, it is, therefore,

Ordered, That said The Hocking Valley Railway Company be, and hereby it is authorized to execute with Walker D. Hines, Director of Railroads (or his successor as such) and Guaranty Trust Company of New York (or such other company as may be designated) as trustee, an agreement substantially in the form of the agreement annexed to the petition herein and marked "Schedule A," establishing an equipment trust, to be designated "Equipment Trust No. 32;" with the same parties to execute another agreement substantially in the form of the agreement annexed to the petition herein and marked "Schedule B," establishing an equipment trust, to be designated "Equipment Trust No. 32-A;" also to execute and deliver to or upon the order of the Director General of Railroads, under Equipment Trust No. 32, its equipment notes in a principal amount equal to the purchase price of the first above designated equipment, but not exceeding one million, three hundred seventy-two thousand, five hundred dollars (\$1,372,500.00), and under Equipment Trust No. 32-A, its equipment trust notes in a principal amount equal to the purchase price of the second above designated equipment, but not exceeding one million, six hundred seventeen thousand, one hundred dollars (\$1,617,100.00), which sums equal the maximum purchase price of said equipment as shown by said Schedules "A" and "B," for the reimbursement of the United States for the cost of said equipment described in Schedules "A" and "B;" said equipment notes to be divided into fifteen (15) series, each for an aggregate principal amount equal to one-fifteenth (1/15) of the aggregate principal amount of the notes to be issued under each Equipment Trust Agreement, and maturing respectively on the fifteenth day of January of each of the years 1921 to 1935, both inclusive, and to bear interest at the rate of six per cent. (6%) per annum from the fifteenth day of January, 1920, payable semi-annually, and to be issued and de-

livered at par and in all respects according to the provisions of said trust agreements. It is further

Ordered, That the applicant make verified report to this Commission of the issuance and disposition of said notes, within thirty (30) days after the delivery of the same or any part thereof. It is further

Ordered, That this order shall become effective on February twenty-fifth, 1920.

And it appearing that the applicant, said The Hocking Valley Railway Company, now has mortgage bonds and notes issued and outstanding excess of its issued and outstanding capital stock, the Commission does further find that the issue and disposition of the aforesaid equipment notes in excess of applicant's issued and outstanding capital stock should be, and hereby they specifically are consented to, authorized and approved.

3

No. 1928—In the Matter of the Application of The Cincinnati, New Orleans and Texas Pacific Railway Company in Regard to Equipment Trust No. ——. Prayer Granted.

(Dated February 26, 1920.)

This day, (it appearing from the verified allegation in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application of The Cincinnati, New Orleans and Texas Pacific Railway Company for the consent and authority of the Commission to the execution of an agreement proposed to be entered into between Walker D. Hines, Director General of Railroads, the applicant company and the Guaranty Trust Company of New York (or such other trust company as may be designated) as trustee, establishing Equipment Trust No.—; and to the issuing, by the applicant, of equipment trust notes in a principal amount equal to the purchase price to the United States of the equipment described in the petition herein, but not exceeding a principal amount of one million and forty thousand dollars (\$1,040,000.00), which is the maximum purchase price of such equipment as set forth in said petition, and the delivery thereof to, or

upon the order of the Director General of Railroads, to reimburse the United States for the cost of said equipment, as authorized and provided by an Act of Congress, approved November 19, 1919.

And it appearing to the Commission that said equipment has been ordered and provided by the President of the United States pursuant to authority of an Act of Congress, approved March 21, 1918, for use upon the lines of of the applicant company, which proposes to secure the use and, ultimately, the ownership of said equipment under and pursuant to the terms of said trust agreement, by means of the conditional sale therein provided for; and that the making of said agreement and the issue and delivery of said equipment notes as prayed, are reasonably required and necessary for the acquisition by said applicant company of additional property and equipment, to be used and useful in the prosecution of its corporate purposes, and for the extension and improvement of its facilities, but not for replacements, and the commission being satisfied that its consent and authority should be granted as prayed, it is, therefore,

Ordered, That said Cincinnati, New Orleans and Texas Pacific Railway Company be, and hereby it is authorized to execute with Walker D. Hines, Director General of Railroads (or his successor as such) and Guaranty Trust Company of New York (or such other trust company as may be designated) as trustee, an agreement substantially in the form of the agreement annexed to the petition herein and marked "Exhibit 2," establishing an equipment trust to be designated "Equipment Trust No. —;" also to execute and deliver to said trustee, to be, by the latter, authenticated and delivered to or upon the order of the Director General of Railroads, its equipment notes in a principal amount equal to the purchase price of the above designated equipment, but not exceeding one million and forty thousand dollars (\$1,040,000.00), which is the maximum purchase price of said equipment as set forth in the petition herein, for the reimbursement of the United States for the cost of said equipment, so described as aforesaid; said equipment notes to be divided into fifteen (15) series, each for an aggregate principal amount equal to one-fifteenth (1/15) of the aggregate principal amount of said notes, and maturing respectively on the fifteenth day of January of each of the years 1921 to 1935, inclusive, and to bear interest at the rate of six per cent. (6%) per annum from the fifteenth day of January, 1920, payable semiannually, and to be issued and delivered at par and in all re-

spects according to the provisions of said trust agreement. It is further

Ordered, That the applicant make verified report to this Commission, of the issuance and disposition of said notes, within thirty (30) days after the delivery of the sums or any part thereof. It is further

Ordered, That this order shall become effective on February twenty-seventh, 1920.

ATTORNEY GENERAL

Water Works Extensions Outside of the Municipality, May Not Legally be Made at its Expense Where it is Known, or by the Exercise of Ordinary Prudence Should be Known, to the Director of Public Service That the Income from Water Rates for Such Outside Service Would be so Disproportionately Less Than the Cost of Such Extension as to Constitute a Substantial Gratuitous Service to Such Outside Users. Municipal Bonds for Extension of Water Works Beyond the Corporate Limits for Supplying Water to Persons Outside Such Limits May Not be Legally Issued under Section 3969, General Code.

No 929—(Opinion Dated January 12, 1920.)

The Bureau of Inspection and Supervision of Public Offices Columbus, Ohio.

Gentlemen: Acknowledgment is made of your recent request for the opinion of this department as follows:

“We desire to call your attention to sections 3966 to 3970, inclusive, of the General Code, and would say that in cases of this nature the general custom has been that the water mains are laid beyond the corporation while under the supervision of the municipal force in charge. payment therefor is made by the individuals desiring the water until such time as the extension nets the municipality in water rentals a certain percentage of the cost of the extension, whereupon the municipality reimburses the person who made the payment therefor.

“However, in a few instances it has been abused, where a municipality has assumed the original expense for one or two water consumers and thereby sustained a heavy loss.

“1. May extensions outside of a municipal corporation under these laws be done at the expense of municipality when it is known that users therefrom will not justify the cost of the extension?

2. If a municipality may legally extend water mains beyond the corporate limits and bear the expense thereof, is there any authority of law for the issuance of bonds to cover or include such extensions, whereas, paragraph 11 of Section 3939 G. C. authorizes bond issues for water works purposes for the ‘inhabitants thereof’?”

Section 3965 to 3988 G. C., Section 6 of Article 18 of the Constitution, adopted in 1912, and Section 3939 G. C., all relating to municipal water works, are pertinent to your inquiry.

It may be observed that statutory and constitutional authority (since 1912) now clearly exist for municipalities acquiring, constructing and extending water works, as will appear from these sections.

The control and management of such water works is entrusted to the director of service.

Section 3957 G. C. provides:

"The director of public service shall manage, conduct and control the water works, furnish supplies of water, collect water rents and appoint necessary officers and agents."

Section 39577 G. C. provides:

"Such director may make such by-laws and regulations as he deems necessary for the safe, economical and efficient management and protection of the water works. Such by-laws and regulations shall have the same validity as ordinances when not repugnant thereto or to the constitution or laws of the state."

Section 3958 G. C. in part provides:

"For the purpose of paying the expenses of conducting and managing the water works, such director may assess and collect from time to time a water rent of sufficient amount in such manner as he deems most equitable upon all tenements and premises supplied with water."

In passing, attention is directed to the first line of this section, as indicating the purposes for which the rates are charged and collected, viz., "paying the expense of conducting and managing the water works."

Section 3959 limits the application of funds raised by levy and taxation for water works purposes "to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever."

Section 3963 definitely specifies what water service shall be furnished gratuitously.

Sections 3966 to 3970 G. C., relate to service to persons outside the corporate limits.

Section 3967 contains the statutory authority to extend the water works service outside the city and in part is:

"On the written request of any number of citizens living outside of the limits of a municipal corporation, the corporation may extend * * * aqueduct and water pipes to any distance outside the corporation limits, not to exceed four miles."

Section 3967 seems to follow in logical sequence in legislating on at least one method of extending such service. Pertinent parts of this section are:

"When a person or persons at his or their expense have laid down and extended mains and water pipes beyond the limits of a municipal corporation * * * the corporation shall furnish water to the residents * * * on the line of such mains and water pipes, subject to the same rules and regulations that it furnishes water to its own citizens, except that the rates charged therefor, shall not exceed those within the corporation by more than one-tenth thereof."

Section 3968 confers jurisdiction on the mayor and police over the territory in which such outside service is given, to enforce the ordinances and regulations relating to such water works, which are made binding on such persons, and Section 3969 provides the rule of action where the territory is later annexed to the city.

Since 1912, however, the municipality's power to extend its water works service beyond its corporate limits can no longer be said to depend upon Section 3966 (*supra*), as in that year Section 6, Article 18, was adopted as a constitutional amendment. This section provides that:

"Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

As the Supreme court stated in *Fitzgerald v. Cleveland*. 88 O. S., 360:

"There has been a new dispensation of governmental power. The dispensation has been made by the people."

So that, so far as the constitutional grant extends, it is placed beyond the control of the legislature.

The reference to these sections and the observations, so far made, are more or less pertinent to both of your questions and bring us now to their separate consideration.

Your first question is:

1. May extensions outside of a municipal corporation under these laws be done at the expense of municipality when it is known that the users therefrom will not justify the cost of the extension?"

Enough has been said to show the very large discretion placed in the director of service. It has been noted that Sections 3956, 3957 and 3958 clothe him with almost plenary powers as to rate fixing. Its abuse is, however, subject to judicial review. As held in *Ramesy v. Columbus*. 12 O. D., 729:

"The law, under the limitations imposed, has left it to the discretion of the director of public improvements to assess and collect water rents of sufficient amount and in such manner as he may deem most equitable, and with the exercise of this discretion this court will not interfere unless it has been made to appear that he has abused the discretion or transgressed the limits of his power."

This is also the holding in the case of *City (Mansfield) v. Manufacturing Company*, 82 O. S., 216. It is to be noted that there is no express authority for or prohibition against so extending the water works service on a non-self-sustaining basis, if such authority or prohibition exists it must be found by implication clearly and necessarily arising from these sections.

Consideration of them indicates the following policies:

1. That the rate must be proportionate to the cost of the service.

This must be so because of the nature of the enterprise; it is a municipal activity not for profit in the ordinary sense of that phrase, but for the benefit of its inhabitants who are equitable owners of the plant, the legal title and management of which is in the municipality in trust for them.

Section 3958 is expressive of such policy. In the *Ramsey* case (*supra*), on page 729, the court said:

"The power to assess and collect water rents is limited by the terms of the legislation conferring it, but the exact line of such limitation can be ascertained only by a proper construction of the legislation on the subject.

"The power may be exercised for this purpose of paying the expenses of conducting and managing the water works, sufficient in amount, and in such manner as they may deem most equitable on all premises and tenements supplied with water."

2. The rates for outside service shall be practically the same as that inside the city."

This policy may be said to be shown by Section 3957, which provides that the outside service rate shall not exceed the inside rate more than ten per cent, apparently an allowance for an increase on account of the increased cost of service and supervision in the outlying territory. This is in accord with the opinion of the attorney general in 1914, Vol. 1, page 895, where it said:

"Under these statutes 3966 to 3969, council and the director of public service or a municipal corporation is given substantially the same control and jurisdiction over matters pertaining to water works, with reference to those persons lying outside of a municipal corporation who lay down pipes themselves and receive water from the municipal corporation, as is had by council and the director of public service over persons being supplied with water within the municipal corporation."

3. That the expense of operating and maintaining the water works is to be borne equally by all those who receive its service."

This is based on the principle that the service being installed for the benefit of all who receive it, each should bear a proportionate part of its cost. Here again much is left to implication. However, in the Mansfield case this policy is stated on page 231 as follows:

"It seems to us that in this last case the proper practice was followed. In the territory the city undertakes to furnish a supply of water, it is its duty to supply all its inhabitants without discrimination, at the same price, subject to the same rules and regulations and under the same or similar conditions. It is not a matter of bargain and sale, or of express contract."

And in the Columbus case (*supra*) we find this:

"True, the rates must be equal and uniform to all consumers without any discrimination whatever, either in measurement, price or terms of payment, except the director may at his discretion fix and establish a minimum meter rate for the services rendered by such water works department."

4. That except as permitted by statute no water works service shall be furnished gratuitously."

This policy is evidenced by consideration of the fact that the

water works service stands in the same relation to the public as public trust funds and cannot be given away.

Section 3963 indicates the state policy in this regard.

It was construed in opinions of the attorney general for 1912, Volume 2, page 1977, as indicative of a result that no other water service can legally be furnished gratuitously. In that opinion, after quoting this section and applying the general rule of law "*expressio unius est exclusio alterius*," it was held that as to all other such water works "the board of trustees of public affairs have the right to charge for water used * * *, not only that they have the right, but for the reason above stated, it is the duty of such trustees so to do."

It might be added that public policy forbids discrimination in such matter and law and right reasoning would condemn the taking of private property for pretended public use and giving it or the use of it to other private persons.

These considerations have been stated somewhat at length because it seems that this precise question has not been decided by the courts and no precedent is thus afforded for its solution.

While the matter involved is not entirely free from uncertainty, it is thought that the legislative intent is reasonably clear. Your letter questions the legality of such outside extension, when, as stated therein, it is "known that the income will not justify the cost of such extension."

It must be borne in mind that the discretion to determine the justification of such extension lies in the director of service, which discretion the courts will not attempt to control or review except in case of its abuse. Your question cannot be intelligently answered in a categorical manner but may be answered in this way.

Water works extensions outside the municipality may not legally be made at its expense where it is known, or by the exercise of ordinary prudence should be known, to the director of service that the income from water rates for such outside service would be so disproportionately less than the cost of such extension as to constitute a substantial gratuitous service to such outside users.

Your second question is:

"If a municipality may legally extend water mains beyond the corporate limits and bear the expense thereof, is there any authority of law for the issuance of bonds to cover or include such extensions, whereas, paragraph 11 of Section 3969 G. C., authorizes bond issues for water works purposes for the 'inhabitants thereof'?"

This is understood by its terms and from personal conference to relate exclusively to the issuance of bonds under Section 3969 G. C., and this opinion is limited to that section, pertinent parts of which are:

" * * * The council * * * may issue and sell bonds * * * for any of the following specific purposes. * * *

"11. For erecting or purchasing water works for supplying water to the corporation and the inhabitants thereof."

Here the authority is granted to issue bonds for a certain purpose clearly defined, viz., erecting and purchasing water works for supplying water to the corporation and its inhabitants. It may be pointed out that the purchase and erection of a water works does not include the extension of such water works already erected or purchased and that supplying water to persons outside of a municipal corporation is not "supplying water to the corporation and inhabitants thereof." This section is not ambiguous and, as said in *Hough v. Dayton Co.*, 66 O. S., 435, "in such case there is no room for construction."

Therefore you are advised that municipal bonds for extension of water works beyond the corporate limits for supplying water to persons outside such limits may not be legally issued under Section 3969 G. C.

*

Where Partnership Articles Provide Against the Dissolution of a Partnership by the Death of a Partner and Through the Course of Succession to the Interest Held by the Deceased Partner in the Partnership Assets and Business, the Death of a Partner Gives Rise to a Succession Taxable Under the Inheritance Tax Law of Ohio, and Therefore, Funds Belonging to the Partnership and on Deposit in Bank are There Held Subject to the Requirements and Regulations of Section 5348-2 General Code.

No. 1021—(Opinion Dated February 26, 1920.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: I have your letter of recent date requesting the opinion of this department upon the following question:

"In the event of the death of a partner in a firm whose partnership agreement specifically provides that the partnership shall not be dissolved by the death of a partner, may a bank permit continued control by the surviving partner or partners of the contents of a safe deposit box standing in the

name of the partnership? Or must the consent of this commission be obtained under the provisions of section 5348-2 of the General Code?"

Section 5348-2 G. C., in so far as material in connection with this question, declares that a custodian of

"assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons," shall not "deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the tax commission of Ohio and the county auditor at least ten days prior to such delivery or transfer."

A word requiring construction here is "decedent." This is defined in section 5331 to include "a testator, intestate, grantor, assignor, vendor or donor."

Without discussing the preliminary point which arises here further, and referring to other opinions of this department in which similar questions have been considered, it is sufficient to observe that section 5348-2 is not intended to apply to cases in which no taxable succession has taken place; and that, conversely, it is intended to apply to and govern the duties of the custodian in all cases in which a taxable succession has taken place and the tax may have accrued.

Your communication does not set out the language of the partnership agreement to which you refer. Conceivably, it may have either of two legal effects, both of which would modify the ordinary incidents of the death of a partner, viz:

(1) The agreement may have the effect ipso facto of transferring to the surviving partner all the equitable interest of the deceased partner upon the death of the latter. Though the efficacy of a partnership agreement to work such a result has never been decided in Ohio, and decisions elsewhere are somewhat conflicting on the point, yet it would seem that section 3092 G. C. recognizes the power of partners to make an agreement having such effect when it provides that

"When the original articles of a partnership in force at

the death of a partner, or the will of a deceased partner dispenses with an inventory and appraisement of the partnership assets, and with a sale of the deceased partner's interest therein, and such article or will provides for a different mode for the settlement of such interest, and for a disposition thereof different from that provided for herein, such interest shall be settled and disposed of in accordance with the provisions of such articles or will."

This section seems to give to partnership articles like efficacy with a will of the deceased partner by way of disposing of the deceased partner's interest after his death, and preventing the ordinary rules of law and equity from applying to the case that would arise in the event of the death of a partner.

(2) The partnership agreement may not attempt to dispose of the interest of the deceased partner to the survivor or survivors, but may have the effect of binding the personal representatives of the deceased partner as partners in respect of transactions occurring after the death, and thus preventing the winding up of the partnership as an incident of death.

20 R. C. L. 991.

In that event, of course, the beneficial interest belonging to the deceased partner will pass to such persons as his will or the statutes of descent and distribution may indicate.

In either event it is the opinion of the Attorney General that a taxable succession takes place in respect of the beneficial interests in the fund represented by the deposit.

Let the cases supposed be taken up in the inverse order. There can be no doubt that if the effect of the partnership agreement is merely to provide that the personal representatives of the deceased partner shall continue to be partners, an inheritance has taken place in every sense of the word and that this inheritance pertains to and amounts to an interest in the partnership assets. It would seem that no discussion of this question is necessary.

In the case of a partnership agreement which has the effect of disposing of the interest of a deceased partner to his survivor or survivors, different questions arise. In such case it is arguable that the partnership agreement, if it is given such binding effect, must be supported by a valuable consideration; and also that the thing has the effect of vesting beneficial ownership in a survivor is an act *inter vivos*, i. e., the partnership agreement itself; for in

this case the partnership agreement determines the transfer, whereas in the other case supposed the partnership agreement merely preserves an interest which becomes the subject of a transfer which is effected through intestacy or by will.

In the case now under discussion, therefore, the question arises as to whether or not the act that the transfer which is determined by the partnership articles is one effected by act inter vivos, supported by a valuable consideration, is sufficient to take the case out of the operation of the statute. The case has been put in this form because after all there is clearly a succession taking place at death, so that, broadly speaking at least, the inquiry might be accurately described as a search for reason, if any, why the law should not operate rather than as a search for reasons why it should operate.

It must be admitted that if the scope of the inheritance tax law were strictly limited to successions arising by will or intestacy, the conclusion would be forced that the case now under discussion would not be subject to such a statute, for the succession is not by intestacy nor by will but by virtue of a contract inter vivos. However, the Ohio inheritance tax law, in common with many others, is not so limited in its scope. As previously pointed out, the term "decendent" includes a grantor or donor, and one of the taxable successions is expressly defined as follows: Sec. 5332, par. 3.

"When the succession is to property from a resident, or to property within this state from a non-resident, by * * sale, assignment or gift, made without a valuable consideration substantially equivalent in money or money's worth to the full value of such property:

(a) In contemplation of the death of the * * vendor (or) assignor * * *

(b) Intended to take effect in possession or enjoyment at or after such death."

Partnership articles to be effective in the case now under discussion must amount to mutual assignments of the interest of the decedent to the survivor in the event of the death of the former. The mutuality of such correlative promises would constitute sufficient consideration in law to give binding force to the articles; but such consideration would not be "substantially equivalent in money or money's worth to the full value of" the property covered thereby. In substance, though perhaps not in legal effect, the provision for the surviving partner is in the nature of a gift; and it is only saved

from being a gift in legal effect by the fact that it was supported originally by a like promise on the part of the donee, should he have been the decedent instead of the survivor.

These considerations point to the conclusion that a taxable succession has occurred if the partnership articles are of the type just supposed. Authority supporting such a conclusion is found in *Matter of Orvis*, 223 N. Y., 1. In that case two partners had entered into an agreement that the survivor should take two funds aggregating one million dollars. The surrogate held that there was no tax if the agreement was upon a consideration and did not come within the terms of the statute. The Appellate Division (179 App. Div. 1) reversed the surrogate. Speaking to the question of consideration, Scott, J., of the Appellate Division, used the following language:

"That this does furnish a sufficient consideration to support the agreement as between themselves I do not question, but I do not consider that that fact alone establishes the non-taxability of the transfer. Mutual promises may furnish a sufficient consideration for a promise to convey in the future, but if there be no other consideration the conveyance when it takes place is, in effect, a voluntary one.

Section 220 of the Tax Law imposes a tax upon a transfer by 'grant, sale or gift * * intended to take effect in possession or enjoyment at or after such death,' * * *

"This language seems to fit exactly the present case. Whether the transaction be considered a sale or a gift, it was clearly intended to take effect only on the death of the vendor or donor, and not then unless the vendee or donee should outlive the vendor or donor. * * *

"The effect of the transaction is precisely as it would have been if each brother had made a will leaving to the other his interest in the accumulated and funded profits, providing such brother survived. In such a case no one would doubt that the transfer was taxable."

It will be observed that the Ohio law is less open to interpretation on this point than the New York law, in that the former expressly provides that the consideration, if there be such, for the sale or assignment inter vivos must be the substantial equivalent in money or money's worth to the value of the property which passes by virtue of such sale or assignment.

In the Court of Appeals the following language was used by Collins, J., affirming the decision of the Appellate Division:

"The legislature did not intend that a purchaser who had

paid full value for the property transferred should directly or indirectly pay the tax besides" * * *.

(In Ohio the question of legislative intent on this point is made clear by the express provisions of the statute itself as pointed out)

"It was intended to tax all transfers * * * made or incepted prior to the death of the transferor in contemplation of or intended to take effect in possession or enjoyment after his death which are in their nature and character instruments or sources of bounty or benefaction and which can be classed as similar in nature and effect with transfers by wills or the interstate laws, because they accomplish a transfer of property, donative in effect, under circumstances which impress on it the characteristic of a disposition made at the time of the transferor's death. * * * The taxability does not depend upon fraud or an attempt to evade the statute; nor does it depend upon the purpose or inducement of the transfer; nor does it depend upon the form given the transfer. * * * If in truth, it, in effect, bestows, under the statutory conditions, a bounty or benefaction, and is not a transfer for money's worth, it is taxable."

This decision is squarely in point under a law substantially identical with the present Ohio law, and effectually disposes of the case under the supposition now under discussion. The opinion furnishes ample reasons justifying the conclusion reached in this opinion with respect to the other case mentioned to the extent, if at all, that a provision in partnership articles that the partnership should not be dissolved but that the executors and personal representatives of a deceased partner should continue in the partnership might be regarded as having a disposing effect, rather than in the light in which it has been previously regarded in this opinion. It would still be the kind of a disposition which the court of appeals of New York has correctly held to be within the spirit and the letter of the statute.

For the foregoing reasons, then, and upon the hypotheses above discussed, it is the opinion of this department that where partnership articles provide against the dissolution of a partnership by the death of a partner and through the course of succession to the interest held by the deceased partner in the partnership assets and business, the death of a partner gives rise to a succession taxable under the inheritance tax law of Ohio; and such being the case, funds belonging to the partnership and on deposit in bank are there held subject to the requirements and regulations of section 5348-2 G. C.

In connection with one of the hypotheses above discussed paragraph 5 of section 5332 G. C. may also be considered. It provides that

“Whenever property is held by two or more persons jointly, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right by the death of one of them shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the enhanced value of the whole property belonged absolutely to the deceased person, and had been by him bequeathed to the survivor or survivors by will.”

This section would seem to apply. It has not been heretofore mentioned because it was also in the New York law considered in the Orvis case, *supra*, (see Sec. 220, par. 7, last amended Chap. 26, Laws of 1919), and was not commented upon by the court in the case cited except to be characterized as “irrelevant.”

SECRETARY OF STATE

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The (Y. F.) Stewart Motor Car Co., Bowling Green, \$500,000. Y. F. Stewart, I. Barringer, C. S. Hatfield, C. H. Gifford, Willis Garns.

The Lake Shore Printing Co., Sandusky, \$25,000. J. E. Miller, C. M. Osborn, H. M. Miller, E. C. Krueger, E. J. Rosino.

The Hocking Valley Bottling Co., Nelsonville, \$50,000. Tony Elum, Helen Elum, J. T. Elum, C. W. Evans, Raymond Somers.

The Merit Fiscal Co., Cleveland, \$25,000. D. R. Wilkin, Q. H. Findlay, K. T. Siddall, M. I. Buelow, I. M. McDonough.

The Merit Motor Co., Cleveland, \$5,000,000. F. M. Walker, A. W. Wells, C. C. Connolly, J. J. Federman, W. L. Zinner.

The Stoner Restaurant Co., Cleveland, \$50,000. R. C. Taylor, H. V. McFadden, F. J. Stoner, H. H. Stoner, A. E. Boyle.

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The W. J. Snyder Co., Toledo, \$25,000. G. W. Ritter, L. H. Schminck, M. M. McGowan, V. Barnes, E. E. Lay.

The Lyons Savings and Loan Co., Youngstown, \$200,000. H. P. Lyons, H. J. Lyons, L. M. Lyons, N. A. Lyons, H. M. Lyons.

The Refiners Sales Co., Dayton, \$100,000. R. S. King, W. E. Talbot, F. S. Parrott, S. W. Dixon, H. S. King.

The Sentinel Realty and Investment Co., Dayton, \$25,000. R. S. King, W. E. Talbot, R. M. Parkinson, S. W. Dixon, H. S. King.

The Universal Roller Skating Co., Kent, \$50,000. L. T. Youmans, H. E. Shearer, E. G. Guthery, B. J. Guthery, H. M. Kodet.

The Aims and Aims Co., Akron, \$10,000. W. A. Libert, A. R. Miller, E. E. Walker, J. B. Lallan, M. Schwindling, N. O. Fetzer, G. A. Acker, Vernon E. Lincoln.

The Security Mutual Paint & Varnish Co., Cleveland, \$1,000. H. G. Dixon, B. D. Glick, W. F. Witt, J. J. McCormick, I. Nungesser.

The Western Flooring Co., Cleveland, \$150,000. J. P. Kalina, J. Holan, J. C. Kovar, C. A. Humel, F. J. Humel, P. V. Kalina.

The Unity Investment Co., Cleveland, \$25,000. J. L. Mihelich, J. Demshar, J. Bukovnik, F. Prevec, L. G. Schooley.

The Alloy Electric Steel Casting Co., Warren, \$150,000. H. L. Coxey, J. S. Coxey, H. H. Vogt, H. Howald, E. Christman.

The Sharp Theatres Co., Cleveland, \$75,000. B. B. Sharp, W. F. Kees, A. P. Howell, M. J. Walther, F. M. Wheeldin.

The Lake View Park Co., Conneaut, \$30,000. J. Van Buskirk, K. E. Gibbs, A. W. Gubbs, K. Van Buskirk, C. E. Benjamin Jr.

The Lansing Improvement Co., Cleveland, \$30,000. J. M. Ulmer, J. M. Berne, A. J. Schanfarber, B. D. Gordon, E. L. Mueller.

The Patrick Hardware Co., Sunbury, \$25,000. Winona Stanforth, P. S. Stanforth, Fannie Cupp, D. M. Cupp, T. B. Perfect.

The K. E. Gibbs Co., Conneaut, \$40,000. K. E. Gibbs, E. L. Hayward, W. R. Lord, H. R. Pugh, A. W. Gibbs.

The Watts & Suhrbier Co., Toledo, \$30,000. C. A. Watts, H. Suhrbier, C. E. Taylor, G. Purcell, T. L. Gifford.

The O. and I. Finance Co., Lima, \$100,000. A. A. Stolly, B. A. Weadock, C. J. Gruenbaum, E. Gordon, Harry I. Pew.

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The Welbon Cleveland Realty Co., Cleveland, \$25,000. T. M. Dye, P. M. Berry, M. I. Buelow, I. M. McDonough, C. A. Alexander.

The Rockside Co., Cleveland; \$275,000. L. W. Kelley, H. O. Evans, W. H. Davis, R. D. Jacobs, R. A. Crider

The Ohio & Michigan Paper Co., Toledo; \$400,000. F. D. Hegemaster, V. D. Sisson, I. G. Winegar, L. E. Ludwig, W. H. Murphy.

The Bradley Feature Film Co., Cleveland; \$250,000. G. Q. Keeley, M. A. McCormick, M. Bernhardt, C. A. Byrne, A. M. Kelley.

The Modern Transit Realty Co., Akron; \$400,000. D. W. Kaufman, H. J. Steiner, F. N. Steiner, D. Kaufman, W. E. Snyder.

The Bradford Mercantile Co., Bradford; \$40,000. J. L. Lomerson, O. F. Moors, W. U. Palsgrove, W. K. Zeller, C. W. Weaver, D. M. Armour.

The Knights of Pythias Temple Co., Barberton; \$25,000. A. Wunderlich, E. B. Frase, P. Meckelson, H. F. Hummel, R. Barnett, G. W. Irish, P. H. Edwards, E. Rishel.

The Carbonized Steel Products Co., Cleveland; \$20,000. H. S. Gottfried, J. S. Silber, J. G. Stashoer, E. Rider, M. Morganstern.

The City Feed & Supply Co., Alliance; \$75,000. C. L. Wright, A. T. Hahn, Walter C. Poto, H. B. Hazzard, E. A. Coburn.

The Stanley Steam Car Co., Cleveland; \$10,000. W. P. Mayer, E. H. Wade, F. C. Rush, L. R. Wade, E. R. Mayer.

The Streibig-Miller Co., Cincinnati; \$10,000. H. P. Miller, W. H. Steibig, W. A. Miller, W. F. Madden, G. Kleeman.

The Bauman Market Co., Toledo; \$5,000. W. F. Bauman, C. C. Linenkugel, B. M. Compton, W. C. Rowe, O. W. Nelson.

The Farmers' Bank, Lilly Chapel; \$25,000. F. M. Stickley, F. M. Horn, T. A. Horn, C. H. O'Brien, A. Bennett, C. K. Fruitt, J. S. Lewis, B. C. Sidner.

The Herzberg Brothers Co., Belaire; \$50,000. J. Herberg, M. L. Sonneborn, C. H. Sonneborn, J. Sauer, L. Herzberg.

Ther De Graff Gravel Co., DeGraff; \$10,000. D. E. Strayer, W. C. Hance, C. M. Brown, W. E. Harris, G. E. Lockhart.

The De Haven Ice Cream Co., Cincinnati; \$50,000. L. O. DeHaven, W. P. Anderson, W. H. Cowan, W. A. Knight, M. M. DeHaven.

The Brooklyn Wet Wash Co., Cleveland; \$3,000. W. B. Ten Eyck, A. W. Ten Eyck, S. A. Kruegel, E. Kruegel, Harold Busch.

The People's Bank, Gambier; \$25,000. A. R. Holtz, R. B. Allen, W. A. Adams, W. M. Carlisle, C. B. Colvill.

The Bader-Temmen Co., Cincinnati; \$10,000. W. C. Bader, M. M. Bader, F. X. Temmen, G. Temmen, C. H. Hoffmeister.

The B. D. & M. Realty Co., Akron; \$50,000. M. A. Berson, R. Mitchell, S. Desure, S. Zubrin, Frank Berson.

The Lade System of Building Survey Co., Cleveland; \$5,000. G. F. Lade, S. M. Parks, E. S. Stanton, J. B. Stanton, M. W. Lade.

The Neininger Provision Co., Bridgeport; \$15,000. R. Barnes, L. W. Heinlein, J. E. Fox, D. H. James, F. Spriggs.

The Keenan-Mendenhall Realty Co., Akron; \$50,000. W. C. Keenan, R. Mendenhall, R. C. Davenport, M. Broderick, D. Gottwald.

The Hevers Grocery & Provision Co., Elyria; \$15,000. H. Hevers, N. Pitts, J. Sharp, C. H. Whitney, T. W. Blaine.

The Fairwin Co., Cleveland; \$10,000. E. C. Wolfe, L. M. Sewell, A. J. Pejasa, G. E. Morgan, E. C. McGraw.

The Cleveland Timber & Development Co., Cleveland; \$200,000. M. G. Spaulding, M. F. Patrick, A. Griffo, E. E. Cunningham, Mrs. Emma Tilden.

The Howe's Great London Shows Co., Cincinnati; \$100,000. T. Corby, W. H. Vollmann, H. H. Hedges, F. Guethli, H. A. Verhage.

The Adria Film Co., Cleveland; \$50,000. W. W. Rosenzweig, A. Saffranm, J. N. Galvin, F. Chapin, W. Z. Goodman.

The C. E. McCullough Co., Cleveland; \$50,000. E. C. Wolfe, E. W. McGraw, A. J. Pejasa, L. M. Sewell, H. L. Deibel.

The Ridenour & Johnson Hardware Co., Jackson; \$20,000. W. Ridenour, H. Johnson, M. G. Ridenour, M. B. Johnson, J. P. McDonald.

The Willis Co., Canton; \$100,000. D. H. Willis, A. H. Willis, J. H. Rainsberger, Ed. W. Stevens, A. M. McCarty.

The E. 30th Euclid Co., Cleveland; \$5,000. H. T. Clark, E. C. Dempsey, H. D. Messick, G. H. Hull, L. H. Stoffer.

The Jefferson Oil & Gas Co., Columbus; \$25,000. J. A. Renner, F. M. Morrison, R. S. Dingledine, H. E. Morrison, E. A. Evans.

The Baldwin Law Publishing Co., Cleveland, \$20,000. J. H. Streb, W. R. Kiefer, J. V. Cory, J. B. Kiefer, D. K. Ford.

The Acme Pharmacy Co., Cuyahoga Falls, \$25,000. Leo Meyer, S. Plotkin, E. V. Maguire, S. Friedman, J. H. Vineberg.

The Campbell-Kinzly Co., Cleveland, \$10,000. R. G. Campbell, I. R. Kinzly, J. R. Kalinsky, C. E. Miller, Louis Sweningson.

The Kraus-Williams Co., Cleveland, \$1,000. J. P. Kraus, T. A. Williams, E. M. Longfellow, Ed. H. Tracy, M. J. Sperber.

The Hanlon-Kenkel Co., Cincinnati, \$10,000. E. J. Hanlon, R. J. Kenkel, G. E. Raywood, E. C. Bachtrup, B. C. Spencer.

The Franklin Clothing Co., Akron, \$1,000. J. D. Hotchkiss, S. Friedman, H. A. Sullivan, N. M. Greenberger.

The Rybka Co., Cleveland, \$25,000. M. Rybka, A. Rogozinski, J. Adamczyk, S. A. Titus, G. Rybka.

The Marion Electric Sales Co., Marion, \$25,000. J. H. Maish, F. A. Huber, D. L. La Marche, C. F. La Marche, J. B. Hume.

The Schmitt Brass Foundry Co., Columbus, \$10,000. G. W. Schmitt, Ed. Schmitt, S. F. Deardorff, G. M. Schmitt, C. V. Dehnhoff.

The James Ohlen & Sons Saw Manufacturing Co., Columbus, \$1,000. L. W. Seymour, H. J. Bradbury, F. Gould, H. S. Ballard, W. J. Ford.

The Columbus Engineering Co., Columbus, \$15,000. G. D. Barok, A. H. Hooper, J. W. Bricker, E. Hauck, H. H. Orr.

The Cleveland Refining Co., Cleveland, \$50,000. B. B. Bond, H. B. Peterman, M. A. Bobrick, H. B. Fuller, C. A. Tucek Jr.

The Greenwood Machine Co., Canton, \$100,000. C. H. Greenwood, J. B. Weida, J. W. Weida, Millard F. Weida, H. E. Greenwood.

The Powell Pressed Steel Co., Hubbard, \$225,000. Ward Beecher, W. J. Powell, E. J. Powell, H. S. Wylde, A. M. Henderson.

The Frank W. English Co., Toledo, \$10,000. F. W. English, James Runn, Clark Stockford, R. R. Beardsley, C. F. Wagener.

The Gates Motor Car Co., Cincinnati, \$50,000. H. L. Gates, E. R. Stevenson, J. A. Stevenson, James H. Hunter, H. A. Gates.

The Niess Realty Co., Toledo, \$15,000. N. Niess, O. W. Nelson, W. D. Skransewsky, H. A. Bogardus, B. M. Compton.

The Wood-Hancock Double Wall Co., Bowling Green, \$10,000. B. S. Schutt, R. R. Hodgson, C. R. Nearing, D. L. Ducat, G. C. Schutt.

The Richley Construction Co., Cleveland, \$10,000. A. Richley, A. B. Lea, J. F. Dyson, E. H. Price, G. M. Bowen.

The Superior Furniture Co., Toledo, \$30,000. S. Leibovitz, B. S. Oechsler, C. W. F. Kirkley, O. J. Smith, G. M. Dean.

The Worstall Cigar Co., Zanesville, \$5,000. W. H. Griffith, H. A. Knoedler, J. M. Woestall, H. J. Jenkins, C. C. Russi.

The Cree-Becker Oil Tool Co., Newark, \$500,000. J. A. Cree, J. A. Becker, E. D. Leach, C. L. Holtz, H. C. Sherman.

The New Era Milling & Baking Co., Dayton, \$15,000. S. Sierschula, A. Meyer, G. F. Ballman, J. Schinner, J. B. Roderer.

The Perfection Dairy Co., Kent, \$100,000. E. C. Tatgenhorst, E. A. Tatgenhorst, J. R. Ferry, Lillian Ferry, C. L. Kartt.

The Ohio Machine and Motor Co., Cleveland, \$50,000. I. H. Case, M. E. Evans, W. W. Richmond, E. O. Carnes, T. E. Vormelker.

The Fay Motor Bus Co., Chillicothe, \$50,000. T. J. Fay, H. S. Kay, E. W. Bonner, J. R. Phillips Jr., A. C. Spetnagel.

The Schmidlin Brothers Co., Toledo, \$25,000. C. W. Schmidlin, D. M. Schmidlin, L. J. Green, R. V. Phillips, E. S. Damon.

The Houghton Malleable Castings Co., Toledo, \$500,000. F. S. Lewis, R. Newbegin, C. H. Lemmon, M. J. Warner, S. A. Carter.

The Ohio Container Co., Cleveland, \$10,000. E. Jones, L. Jones, L. T. Jones, Dwight Jones, D. E. Jones.

The Acme Floral Co., Columbus, \$10,000. E. K. Stoughton, W. S. Holstein, K. I. Stoughton, N. J. Holstein, F. G. Mirick.

The Mill-Rose Co., Cleveland, \$10,000. H. E. Rose, V. H. Miller, H. T. Smith, C. E. Turrell, R. Kornfeld.

The Liberty Candy Co., Cincinnati, \$25,000. A. Goodman, P. Miller, A. Wasserman, Chas. Minowitz, Sam Simpson.

The Motor Service & Supply Co., North Canton, \$60,000. G. F. Smith, S. J. Druckenbrod, P. E. Smith, R. H. Druckenbrod, F. A. Howell.

The Stratford Phonograph Co., Ashland, \$1,000. E. C. Wolfe, A. J. Pejisa, L. M. Sewell, B. F. Levin, E. W. McGraw.

The Felch & Ingalls Co., Conneaut, \$10,000. I. P. Felch, J. R. Ingalls, C. B. Hicks, L. I. Felch, G. B. Ingalls.

The Fostoria Elks Home Co., Fostoria, \$75,000. M. M. Carr, Frank Kelley, C. R. Peter, G. A. Snyder, Richard F. Kelley.

The Prichard-Casler Co., Cleveland, \$255,500. M. Mae D. Prichard, K. Siddall, W. A. Casler, B. H. Findley, C. A. Alexander.

Increases

The Gallia Masonic Co., Galliopolis, \$30,000 to \$37,500.

The Levy Overall Manufacturing Co., Cincinnati, \$200,000 to \$500,000.

The Dimler-Himes Tool Co., Dayton, \$20,000 to \$250,000.

The East Side Building & Loan Co., Cincinnati, \$500,000 to 1,000,000.

The Myers Coal & Coke Co., Cleveland, \$20,000 to \$50,000.

The Provident Loan Co., Cincinnati, \$2,000,000 to \$3,000,000.

The Reynolds Machine Co., Massillon, \$200,000 to \$500,000.

The Cleveland Electric Illuminating Co., Cleveland, \$18,000,000 to \$30,000,000.

The Miller Rubber Co., Akron, \$20,000,000 to \$60,000,000.

The Paddock Merchandise Co., Toledo, \$75,000 to \$200,000.

The Travelers Bag Manufacturing Co., Cleveland, \$10,000 to \$30,000.

The Roberts Steam Specialty Co., Cleveland, \$10,000 to \$20,000.

The John Kaiser & Brother Co., Elyria, \$10,000 to \$30,000.

The Combined Realty Co., Toledo, \$50,000 to \$100,000.

The Garman & Loomis Co., Akron, \$25,000 to \$150,000.

The Ohio Wholesale Grocery Co., Cleveland, \$50,000 to \$200,000.

The McArthur Realty Co., Cleveland, \$10,000 to \$50,000.

The Cribbs Oil and Production Co., Fostoria, \$25,000 to \$150,000.

The United Erecting Co., Cleveland, \$25,000 to \$100,000.

The Beall-Sterling Co., Steubenville, \$75,000 to \$250,000.

The H. K. Ferguson Co., Cleveland, \$150,000 to \$250,000.

The Cuyahoga Securities Co., Cleveland, \$50,000 to \$100,000.

The Bryan Screw Machine Products Co., Bryan, \$150,000 to \$200,000.

The Haselton Stone & Sand Co., Youngstown, \$50,000 to \$70,000.

The Peet & Schuster Co., Springfield, \$10,000 to \$25,000.

The City Warehouse Co., Cleveland, \$25,000 to \$100,000.

The Canton Material Co., Canton, \$25,000 to \$50,000.

The McKenzie Lumber & Coal Co., Springfield, \$50,000 to \$100,000.

The American Soap Co., Cincinnati, \$10,000 to \$50,000.

The Redding Steel Products Co., Cleveland, \$25,000 to \$250,000.

The Richley Construction Co., Cleveland, \$10,000 to \$100,000.

The Sleepy Hollow Country Club Co., Cleveland, \$1,000 to \$80,000.

The Deacon Co., Zanesville, \$15,000 to \$50,000.

The Zenn Paint and Glass Co., Youngstown, \$25,000 to \$50,000.

The Gary Cement and Paint Works Co., Cleveland, \$10,000 to \$25,000.

The Ohio Cut Rate Furniture Co., Youngstown, \$25,000 to \$50,000.

The Farmers' Elevator, Grain and Supply Co., New Bavaria, \$15,000 to \$30,000.

The Hemmeter-Martens Co., Salem, \$35,000 to \$45,000.

The McLaughlin & English Co., Canton, \$10,000 to \$1,000,000.

The Folding Box Co., Cleveland, \$525,000 to \$1,050,000.

The American Zinc Products Co., Youngstown, \$1,000,000 to \$1,400,000.

The Ohio Clay Products Co., Uhrichsville, \$10,000 to \$100,000.

The Z. L. White Co., Columbus, \$200,000 to \$300,000.

Decreases

The Poynter Photo Lamp Co., Cincinnati, \$50,000 to \$10,000.

The A. Cherna Co., Cleveland, \$50,000 to \$5,000.

The Morrow Steamship Co., Cleveland, \$500,000 to \$750,000.

The Ohio Book Co., Cleveland, \$5,000 to \$25,000.

The Andrews Sroe Co., Cleveland, \$50,000 to \$150,000.

The Farmers and Merchants Bank Co., Warshaw, \$25,000 to \$50,000.

PUBLIC UTILITIES COMMISSION

No. 1914—In the Matter of the Application of The North Brewster Light Company for Consent and Authority to Issue Stock of Said Company. Prayer Granted.

(Dated March 1, 1920.)

This day this matter came on for final consideration upon the application of The North Brewster Light Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue common capital stock of the par value of two thousand, eight hundred dollars, two thousand, five hundred dollars, par value, of said capital stock to be issued and delivered in full and final payment of the consideration for the property of The North Brewster Electric Light, Heat and Power Company, to be purchased by the applicant under authority of the order heretofore made and entered in proceeding No. 1872, and the proceeds arising from the sale of three hundred dollars, par value, of said capital stock, to be used in providing additions, extensions and improvements to the applicant's facilities:

Upon consideration whereof, and being fully advised in the premises, and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding,

(1) That the value of the property, so to be acquired by the applicant under authority of the order made and entered in proceeding No. 1872, is the sum of \$2,500.00;

(2) That the applicant now has in contemplation the provision of additions, extensions and improvements to its facilities, the cost of which has been estimated at the sum of \$300.00, and

(3) That the issue of applicant's said capital stock of the par value of \$2,800.00 and the money to be secured by the sale of \$300.00, par value thereof, are reasonably required and necessary for the acquisition of property, to be actually used and useful for the convenience of the public in the prosecu-

tion of applicant's corporate purposes, and for the construction, completion, extension and improvement of applicant's facilities,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The North Brewster Light Company be, and hereby it is authorized to issue its common capital stock of the total par value of two thousand, eight hundred dollars (\$2,800.00), and that three hundred dollars (\$300.00) par value, of said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That \$2,500.00, par value, of said capital stock be issued and delivered as fully paid and non-assessible, in full and final payment of the consideration for the property to be acquired of The North Brewster Electric Light, Heat and Power Company, the purchase of which, by the applicant, was duly consented to and authorized by the order heretofore made and entered in preceeding No. 1872, and that the proceeds arising from the sale of \$300.00, par value, of said capital stock used to pay the cost of actual net additions, extensions and improvements to the applicant's facilities, nor shall said capital stock, or the proceeds thereof, be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof, pursuant to the terms and conditions of this order.

3

No. 1919—In the Matter of the Application of The Ohio Gas and Electric Company to Sell Real Estate Situated in the Village of Lisbon, County of Columbiana, and State of Ohio. Prayer Granted.

(Dated Marh 1, 1920.)

This day, (it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for final consideration upon the application of The Ohio Gas and Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the con-

sent of this Commission to sell to The Lisbon Community Chamber of Commerce three separate pieces of real estate situated within the village of Lisbon, Ohio:

Upon consideration whereof and being fully advised in the premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon and for the purposes of this proceeding, that, said real estate being no longer used or useful for the convenience of the public, the public will, by said sale of said real estate, secure adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for said sale of such real estate should be granted. It is, therefore,

Ordered, That said The Ohio Gas and Electric Company be, and hereby it is authorized to sell and convey to The Lisbon Community Chamber of Commerce for the sum of two thousand, seven hundred and fifty dollars the three parcels of real estate more particularly described in the petition herein. It is further

Ordered, That the findings as to rates and service hereinbefore set forth shall not be binding upon this Commission in any future proceeding involving said matters.

J

No. 1918—In the Matter of the Application of The Cleveland, Southwestern and Columbus Railway Company for Consent and Authority to Extend the Time of Payment of \$110,000.00, Par Amount, of First Mortgage, Six Per Cent. Gold Bonds of The Norwalk Gas And Electric Company, Dated April 1, 1920. Prayer Granted.

(Dated March 2, 1920.)

This day after due notice to all parties in interest, this matter came on to be heard, and was heard upon the application of The Cleveland, Southwestern and Columbus Railway Company, (a consolidated railroad corporation created by an agreement of consolidation, by and among certain companies, which agreed to pay certain outstanding issues of bonds of the said companies and their prior existing constituent companies, among which was an issue of the principal sum of one hundred and ten thousand dollars of twenty-year, six per cent, First Mortgage Gold Bonds of The Norwalk Gas and Electric Company, dated April 1 1900, maturing April 1 1920), asking such consent and authority of this Commission as will authorize the applicant to consummate an arrangement, negotiated with the parties in interest, whereby the maturity date of said First

Mortgage, six per cent. Gold Bonds of The Norwalk Gas and Electric Company will be extended to February first, 1923, in consideration, among other things, of the payment, by applicant, at the time of said extension, of a cash consideration of fourteen dollars and seventeen cents (\$14.17) for cash \$500.00, par amount, of bonds so extended, in addition to the interest upon said bonds for said extended period at the rate of six percentum per annum:

The commission, being fully advised in the premises, and having taken into consideration the condition the condition now obtaining in the financial markets and surrounding the sale of securities, finds that it will be much more advantageous to the applicant to reorganize its said indebtedness by negotiating such extension of said bonds and paying such cash consideration, than to sacrifice new securities at the discounts which would now have to be offered to market any new securities to obtain the funds necessary for the payment and discharge of said first mortgage, six per cent. gold bonds of The Norwalk Gas and Electric Company upon April first, 1920, should the maturity date there of not be extended, and it appearing that some manner of discharging or postponing the date of the payment and discharge of said obligations must be provided on or before the first day of April, 1920, the commission further finds that, in view of the satisfaction of the trustees for, and the holders of, said bonds therewith, the said extension of the maturity date of said bonds is necessary and reasonably required, and is satisfied that its consent and authority therefor should be granted. It is, therefore,

Ordered, That said The Cleveland, Southwestern and Columbus Railway Company be, and hereby it is authorized to extend to the first day of February, 1923, the maturity date of the one hundred and ten thousand dollars (\$110,000.00), principal amount, of first mortgage, six per cent. gold bonds of The Norwalk Gas and Electric Company, the payment of which it has heretofore assumed, and to pay, in addition to the interest during said period at the rate of six percentum per annum, a cash consideration of fourteen dollars and seventeen cents (\$14.17) for each five hundred dollars, par amount, of bonds so extended, at the time said extension is agreed to by the respective bond holders, all in accordance with the terms set forth in the agreement set forth in the copy of the resolution of the applicant authorizing said agreement filed herein, as "Exhibit B" on the twenty-sixth day of February, 1920, which hereby is made a part of this order by reference, and to execute such instruments of

writing, and do all and several the things necessary to be done to secure said extension of the maturity date of said bonds, and to perform its part of said agreement relative to such extension of the maturity date of said bonds and the payment of said consideration in addition to the prescribed rate of interest thereupon.

And it appearing that the applicant now has issued and outstanding bonds in excess of its issued and outstanding capital stock, it is therefore further

Ordered, That this commission do hereby specifically consent to, authorize and approve the extended existence as issued and outstanding bonds, of the said bonds in excess of applicant's outstanding capital stock for and during said extended existence thereof. It is further

Ordered, That the applicant make verified report to this commission of the consummation of the extension of the maturity date of said bonds.

ATTORNEY GENERAL

The Method of Raising Funds for District Health Boards Under the Hughes and Griswold Acts for the Years 1920 and 1921, Fully Considered in the Opinion Also Giving Statutes Applicable.—It is Not Necessary for the Advisory Council to Re-appoint a Board of Health Under the Griswold Act, Where a Board Has Been Appointed Under the Hughes Act and the Members Continue as Residents of the District.—A District Health Board May Legally Enter Into a Contract Employing a District Health Commissioner and Fix His Compensation Before They Have the Money at Their Disposal With Which to Pay the Compensation.—In case an Epidemic Should Require a Quarantine Prior to the Time When the District Health Board Has Employed a District Health Commissioner the District Health Board has Authority to Declare a Quarantine and Enforce the Same—Under the Griswold Act the Terms of Appointees and Employes Appointed by Municipal Boards of Health Are of Operation of Law Terminated.

No. 1037—(Opinion Dated Feb. 27, 1920.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: In a recent opinion to your department, No. 966, relating to the status of municipal health boards, under the Hughes and Griswold acts, it was held by this department that the effect of the passage of those acts was to abolish the old municipal health boards established under authority of section 4004 G. C., but the question of the status of the appointees and employes of such boards for the reasons therein stated was reserved for consideration in a separate opinion.

Since the receipt of your request, this department has received numerous requests for advice upon various features of the Griswold act and as a practical method of disposing of such questions it is deemed advisable to consider them in this opinion to your department.

Hon. Mervin Day, Prosecuting Attorney of Paulding County, in a recent letter, requests the opinion of this department upon these five questions:

"1. Our first inquiry is what is the proper method to pursue to create a fund whereby the district health board may

employ a health commissioner, and pay the necessary expenses connected with the administration of the present health law? Does Section 1261-41 apply now in regard to raising the first money that is needed?

2. Should the District Advisory Council make up a budget to cover expenses for the ensuing year, transmit the same to the Auditor, and should the Auditor then certify the proportion to each municipality and township, to be paid over to the county, and should those municipalities and townships which have no fund then proceed to borrow the money in order that they may turn it over to the county?

3. Is it necessary for the Advisory Council to re-appoint a Board of Health for this District under the Griswold Act; or is the Board that they have already appointed under the Hughes Law before the Amendment the proper Health Board to continue?

4. Can the District Health Board legally enter into a contract employing a District Health Commissioner, and fix a compensation therefor before they have the money at their disposal, with which to pay the compensation?

5. In case an epidemic should require a quarantine prior to the time when the District Health Board has employed a District Health Commissioner, who has the authority to declare a quarantine and enforce it?"

Your remaining question may be re-stated and numbered as follows:

"6. What effect does the abolition of the municipal boards of health have upon the appointees and employes of such boards?"

Much of what has been said in the former opinion referred to is applicable in a general way to most if not all of the questions above stated and your attention is especially directed to that opinion in connection with the consideration of these questions.

The first question relates to the proper method of creating a fund for the payment of the necessary expense incidental to the administration of the present health law.

It is noted that it also inquires if section 1261-41 applies "in regard to raising the first money that is needed"?

This last question may be disposed of by directing attention to the fact that section 1261-41 (section 26 in the Griswold act) applies only, as stated in the first sentence of the section, "in case of epidemic or threatened epidemic or the unusual prevalence of a dangerous communicable disease," and does not apply to the method of raising the usual and ordinary funds of the health district.

Section 1261-40 is the section of the new act which provides for the making of an estimate of the amounts needed for the current expenses for the fiscal year beginning January 1, 1921.

With the exception that this estimate shall be submitted to the budget commissioner instead of being submitted to the district health council and apportioned on the basis of taxable property instead of population, as provided in the corresponding section in the Hughes bill, the procedure here outlined is the same as that outlined in section 25 of the Hughes act. Section 25 of the Hughes act was numbered section 1251-40 and, as such, was amended by the Griswold act.

In Opinion No. 610, dated September 9, 1919, directed to Hon. John L. Cable, Prosecuting Attorney of Allen County, this section was considered at length and it was pointed out in that opinion that it contained no direct authority to levy, nor was there any such authority given in any other section of the act. It was also pointed out that no change was made in the method of making the levy and that section 25 presupposed the making of such levies under existing laws and that after receiving the itemized statement of the amount needed for the current expenses of the health districts, as finally approved by the district advisory council, the auditor was not authorized to levy such an amount, but his duties from that point were rather those of apportioning to and collecting from each taxing subdivision its share of the total estimate on the basis of population resulting in an appropriation and segregation of the subdivision's share.

Present section 1261-40 changes that section only in these two particulars: (1) That the estimate is submitted to the budget commission as pointed out, and (2) that the apportionment is based on taxable valuations instead of population in such subdivisions. So that what was said concerning the effect of section 25 is equally applicable in this respect to the present section. A copy of this opinion is enclosed herewith for consideration in connection with the present opinion. So that the first step in creating this fund (except for the year 1920, which will be later considered), is by the proper levy by township and municipal officers in the same manner as provided and practiced before the enactment of the Hughes-Griswold acts.

Much confusion may be avoided by keeping in mind that this part of the law does not relate to or affect directly the initial process of making health levies. The levying power, as found in pre-

existing laws, starts with the township trustees and municipal councils coming up through the budget commission and reaches the tax duplicate in the method of other levies. The estimate referred to in the later acts comes from the district board of health and is certified to the county auditor, who submits it to the budget commission, which has power to decrease but not to increase it. From the budget commission it does not go on the duplicate as a levy, but is then turned back to the auditor, to be apportioned among the townships and municipalities on the basis of taxable property. Nor are these sums then evaluated in terms of rates and levied against these subdivisions, but are debited against their accounts in semi-annual settlements with the auditor, in the nature of a preferred charge against their health or general funds. The auditor may retain from such funds one-half of such apportionment at each settlement. The office of this estimate would seem to be to insure the availability of required health funds by giving health purposes a preference over other township or municipal purposes in the general health district. The levying authority and the budget commission determine the amount of the levy; then the district board of health and the budget commission fix another kind of a budget for apportionment and retention by the county auditor.

While not specifically stated in the questions quoted, obviously the most urgent question confronting officials charged with the enforcement of this law is the matter of raising the necessary funds for the present year. Section 1261-40, by its terms, does not apply to the present year.

We must turn to section 2 of the Griswold act for the rule of action for the present. It must be borne in mind that as pointed out in the opinion last referred to, neither of the last two amendments disturbed or changed in any manner the power and method of making the levies from the proceeds of which expenses for health administration were paid, and, assuming that such levies have been made, the last two sentences of section 2 of the Griswold act are pertinent. They read:

"Each board of health in a general health district shall meet within ten days of the taking effect of this act, and shall adopt a budget for the year 1920, which shall be immediately transmitted to the auditor of the district, who shall submit the same to the district advisory council at a meeting to be called by him at his office within five days of the receipt of such budget. The district advisory council shall review such budget in accordance with the provisions of this act, and when reviewed and approved by the district advisory council, such

budget shall be apportioned among the townships and villages as provided by this act."

This effectually provides for the year 1920 by making section 1261-40 the method of apportionment, except that the budget for 1920 shall be submitted, as had been provided in section 25, *supra*, of the Hughes act, to the district advisory council. It is believed that careful consideration of these two sections will furnish the proper method of apportionment and application of such funds.

As pointed out in the Cable opinion and on the authority of *Porter, et al. v. Hopkins, et al.*, 91 O. S. 74, these sections authorize the auditor to retain the proper proportion of the apportionment out of general township or municipal funds.

At this point it may be observed that in the event of a township or municipality not having, at the semi-annual settlement, sufficient general funds from which such health funds may be taken, and an emergency results within the purview of section 1261-41, relating to epidemics, that section may be utilized in the manner thereupon provided.

It is believed that this discussion practically answers the first and second questions, except that it should be supplemented by the more specific answer to the question relating to section 1261-41 by the statement that that section does not apply except in case of epidemic, as above noted, and that the act of itself does not confer any new authority for the townships or municipalities to borrow money to be turned over to the county to discharge the apportionment against it and that the relief in such cases must be found by recourse to section 1261-41, as above indicated.

In this connection it may be observed that as suggested in your reference to sections 3278 and 3279, the township trustees are not expressly divested of all powers in connection with loathsome or infectious diseases. These sections were not expressly repealed by the later acts and confer certain powers on the trustees without reference to the other township board of health statutes which were repealed. Section 3279 enables the trustees to "make and enforce all necessary health regulations to prevent the spread of smallpox or other loathsome disease," and make the violation of such regulations a misdemeanor. These sections, however, contain no authority to borrow money and the question of their implied repeal is not deemed necessary to the consideration of your questions.

The third question relates to the status of the district board of health appointed under the Hughes act and inquires specifically

if it is "necessary for the advisory council to re-appoint a board of health for this district under the Griswold act; or is the board that they have already appointed, under the Hughes law before the amendment, the proper health board to continue?"

In the previous opinion to your department, above referred to, it was held that the effect of the Hughes and Griswold acts was to abolish the municipal boards of health and the conclusion therein reached concerning such boards would be the same conclusion in answer to this question, but for the saving clause in section 2 of the Griswold act. This section in part is as follows:

"Section 2. Members of boards of health of general health districts appointed in accordance with the provisions of Sections 1261-17 and 1261-18 of the General Code, who are residents in the township or villages of the general health district for which they are appointed shall be and continue as members of the board of health of the general health districts composed of the townships and villages as provided by this act, which were contained in the general health districts for which they were appointed. Vacancies in boards of health in general health districts caused by non-residence shall be filled as provided by this act for other vacancies. * * *."

While not pointed out in the opinion as to municipal boards of health, this expression of a different legislative policy, that is, an express provision for the continuance of the old general health district board, re-enforces the conclusion reached in that opinion on the application of the maxim that "the expression of one excludes the other."

Consideration of the effect of this saving clause leads to a negative answer to question No. 3, that is, that it is not necessary to make such appointment under the Griswold act, if the members appointed continue as residents of the townships or villages composing the district.

Your fourth question is as follows:

"Can the district health board legally enter into a contract employing a district health commissioner, and fix a compensation therefor before they have the money at their disposal, with which to pay the compensation?"

The section containing the authority of the general health district board to contract with a health commissioner is Section 1261-19. The first part of this section refers to the selection of the health commissioner as an appointment, but the section also provides that

such appointee "shall devote such time to the duties of his office as may be fixed by contract with the district board of health." Another part of the section refers to such appointment in this language:

'upon such terms and for such period of time not exceeding two years, as may be prescribed by the district board,"

this clearly indicating the power of the board to contract in such matter.

So far as the present act goes, there is no inhibition against making such a contract before they have the money at their disposal and it remains to be seen if other general sections prevent such action.

Sections 3806 and 6560, requiring what is known as the Burns law certificate, may be considered.

Section 3806 relates exclusively to contracts "by the council or by any board or officer of a municipal corporation." Section 5660 applies only to "the commissioners of a county, the trustees of a township and the board of education of a school district." The board of health is not included in or affected by these sections and they do not therefore prevent the making of the agreement referred to, and the answer to your fourth question is, therefore, an affirmative one.

Your fifth question asks who has the authority to declare a quarantine and enforce it before the district health board has employed a health commissioner. Of course the state board of health would have authority, in case of the failure of the district board to make and enforce quarantine regulations, but it is also believed that the powers granted the district board of health may be exercised by it in such a case even though a health commissioner has not yet been appointed, while under sections 3278 and 3279 (*supra*) certain powers as to quarantine are granted to township trustees.

Section 1261-23, 1261-30 and 4425, et seq., relating to quarantine, in cases of dangerous communicable diseases, indicate the scope and extent of the board's powers in such matters and in the case stated in your question the answer is that the district health board has such authority.

We come now to what we have stated as question No. 6, concerning the status of appointees and employes of the old municipal health boards.

As heretofore pointed out, and this applies to this 6th question particularly, the former opinion of this department with reference to such boards must be read in connection with this opinion.

No question can be made as to the power of the state to abolish such offices or terminate such employments. As stated in 29 Cyc., 368:

"The authority in the government * * * to create an office has, in the absence of some provision of law, passed by a higher authority, * * * the implied power to abolish the office it has created."

and having concluded that the legislature, in the Hughes and Griswold acts, did abolish the municipal boards, it would seem that the employes of such board are by that act of abolition without an employer and their employment is by operation of law terminated.

As pointed out in the former opinion, the effect of the repeal of a statute, in the absence of saving provisions, has the effect of blotting out the repealed statute as if it had never existed and putting an end to all proceedings under it.

It is said in 29 Cyc., 1396:

"Where an office is created by a statute, the term of which is * * * during good behavior, the officer holds only so long as the statute remains in force. (Citing 1 Dana (Ky.) 447)

Other authorities may be cited, but it is deemed sufficient to state that the abolition of the board, having the power of employment under statute, automatically terminates terms of employments and appointments by said board.

The recent decision in *Elyria v. Vandemark*, decided by the Supreme Court September 9, 1919, is pertinent. Consistent with earlier decisions of that court, the Supreme Court in the *Elyria* case holds that there can be no de facto officer in Ohio without a de jure office. This principle taken in connection with the legislative policy fixed in section 486-16 as amended in 106 C. L. 411 (civil service act) where it is provided that

"* * * whenever any permanent office or position in the classified service is abolished or made unnecessary, the person holding such office or position shall be placed by the commission at the head of an appropriate eligible list, and for a period of not to exceed one year shall be certified to an appointing officer as in the case of original appointments,"

plainly discloses the legislative intent in such cases, and the conclusion must be reached that, no saving clause existing in the Griswold act, the terms of appointees and employes of the old municipal health boards are by operation of law terminated.

Under the Provisions of the Act of 108 O. L., 306, Part 1, for the Inspection of Dry Cleaning and Dyeing Establishments, the License Extends Only to January 1st., Next After the Date of Issue Unless Renewed as Provided in Said Act. (Sec. 843-22 G. C.) Applications for Renewals Must be Made Within 30 Days After the Termination of His Permit and He must Pay a Fee of \$5.00 Therefor. The Intention of the Licensee to Move His Business, Does not Excuse From Securing a Renewal of His Permit. A Permit to Conduct a Dry Cleaning or Dry Dyeing Business in a Certain Building or Establishment Confers no Authority upon the Licensee to Conduct His Business in Another Building or Establishment at Another Location. Where a Building or Establishment Covered by a Permit is Reconstructed, a New Application Must be Made for a Permit and \$10.00 Inspection and Filing Fee Paid.

No. 999—(Opinion Dated February 10, 1920.)

Hon. William J. Leonard, State Fire Marshal, Columbus, Ohio:

Dear Sir: Your letter of recent date propounding certain questions arising under the act passed April 14, 1919 (108 O. L. 306. Part 1), which provides for the inspection of dry cleaning and dry dyeing buildings and establishments, was duly received.

The provisions of the act in so far as they are necessary to a proper determination of your question will be briefly referred to.

Section 2 of the act (Section 843-20 G. C.) provides that:

"No building or establishment shall be used for the business of dry cleaning or dry dyeing * * *, until an application for permission to do so shall have been filed with and approved by the state fire marshal of the State of Ohio," etc.

By Section 3 of the act (Section 843-21 G. C.) an applicant for a permit is required to pay to the state fire marshal a filing and inspection fee of \$10.00.

By Section 4 of the act (Section 843-22 G. C.) it is provided that when an application for a permit is filed and the fee paid, the state fire marshal, his deputies or assistants

"shall make an inspection of such building, buildings or establishments, and if the same conforms to the requirements of law and rules which may be prescribed by the state fire marshal for such places, then the state fire marshal shall issue a permit to the applicant for the conduct of such business, which permit shall extend until the first day of January next after the date of the issuing of same."

By Section 5 of the act (Section 843-23 G. C.) it is provided that:

"Permits may be renewed at any time within thirty days after the termination thereof, by the filing of an application for such renewal and the payment of a fee of \$5.00 therefor,"

provided the applicant has complied with the provision of the act, and with the other laws of the state and municipal ordinances, etc.

The act then proceeds to designate the character of buildings that may be used for dry cleaning and dry dyeing, and to make special provisions as to walls and roof, sewer connections, ventilating apertures and covering skylights and windows, fire extinguishment, protection of steam and hot water pipes, etc.

By Section 30 (Section 843-48 G. C.) it is provided that the act shall not be held to apply to any building, business or establishment now in use so as to cause the same to be rebuilt, remodeled, or repaired to conform to its provisions, but should any building or establishment, or part thereof, be reconstructed, rebuilt or repaired, it shall be constructed, built or repaired in conformity to its provisions.

1. Life of Permit.

A permit to use a building or establishment for dry cleaning or dry dyeing issued at any time during the calendar year, extends until the first day of January, next after its date of issue (Section 4 of the act, Section 843-22 G. C.), unless renewed in the manner within time hereinafter mentioned.

2. Renewal of Permit.

In case the licensee desires to conduct a dry cleaning or dry dyeing business in the same building or establishment covered by his permit, on and after the first day of January next after the date of its issue, he must, within thirty days after the termination of his permit make application to the state fire marshal for its renewal and pay a fee of \$5.00 therefor. The mere fact that a licensee intends to move his business to another building or establishment, will not excuse him from having his permit renewed as the act requires, in case he desires to continue in business at the present location after the termination of his permit.

3. Permit only covers particular Building or Establishment Referred to Therein.

A permit to conduct a dry cleaning or dry dyeing business in a certain building or establishment confers no authority upon the licensee to conduct his business in another building or establish-

ment at another location. The act is specifically directed at the particular building or establishment that is required to be mentioned in the application for a permit, and provide that such building or establishment shall be inspected and found to conform to the requirements of law and rules prescribed by the state fire marshal before a permit shall be issued to the applicant.

It is not intended to hold that an "establishment" cannot embrace two or more buildings, but it is intended to hold that where the application is for a permit to conduct business in a certain "establishment," and a permit is granted therefor, its scope and operation is confined to the particular buildings or buildings referred to in the application as constituting the establishment.

It would result from the foregoing construction of the act, that if a building or establishment covered by a permit should be reconstructed, as distinguished from being repaired, it would cease to be the building or establishment theretofore inspected and covered by the permit, and before it could be used for the business of dry cleaning and dry dyeing, it would be necessary that an application be made for a permit and a \$10.00 inspection and filing fee paid, that the building or establishment be inspected and found to be reconstructed in conformity to the act, and that a permit be issued to conduct business therein.

3

A Machine for Vending Gum Whereby the Customer Places a Nickel In a Slot and Draws a Bunch of Gum and Trading Stamps, and Which May Also be Operated by Giving Different Numbers of Trade Stamps is a Gambling Device, the Operation of Which is Prohibited by the Laws of This State.

No. 1026—(Opinion Dated Feb. 26, 1920.)

Hon. Edward Gaudern, Prosecuting Attorney, Byran, Ohio.

Dear Sir: Your recent communication is as follows:

"Will you kindly advise me whether in your opinion the operation of gum vending machine is punishable under the laws of Ohio. This machine as described to me is placed on counters of grocery stores and pool rooms; the customer puts a nickel in the slot and draws a bunch of gum and a number of trade checks like the enclosed. The machine may also be operated by putting in these trade checks and drawing out one to five, ten and twenty of them in return, similar to the old nickel slot machine, and the proprietor will cash the checks in trade, either cigars or candy or groceries. The machines have

the stamp of the federal government upon them, the license fee having been paid.

If the operation of these machines constitutes an offense in Ohio, will you kindly so advise?. It is not clear in my own mind that a conviction could be maintained."

The question presented is whether or not a slot machine such as you describe constitutes a gambling device under the laws of this state.

Section 13056 G. C. provides:

"Whoever permits a game to be played for gain or by means of a device or machine in his house or in an out-house, booth, arbor or erection of which he has the care or possession, shall be fined not less than fifty dollars nor more than two hundred."

Section 13066 G. C. provides:

"Whoever keeps or exhibits for gain or to win or gain money or other property, a gambling table, or faro or keno bank, or a gambling device or machine, or keeps or exhibits a billiard table for the purpose of gambling or allows it to be so used, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days, and shall give security in the sum of five hundred dollars for his good behavior for one year."

In an opinion rendered by the Attorney General, reported in Vol. II, page 1341, annual report of the Attorney General for 1912, this question seems to have been passed upon. The question then presented was as follows:

"The question that concerns a portion of this county is, How far can a slot machine go before it is run in violation of the law? A firm has a slot machine in its place of business, a 'nickel' is placed in the machine, and in return you are liable to get five-cent chips up to as high as \$2.00 in the aggregate, a person at least receiving at least a package of chewing gum. Does the giving of the gum prevent the machine becoming a gambling device under the statutes?"

The conclusion of said opinion is in part as follows:

"It is my opinion that the giving of gum, whether equal to or less than the value of the nickel for each nickel placed in the slot of the machine, is not such an act or subterfuge as to take such machine from out of the operation, of the above quoted. As you suggest in your opinion, the nickel is put in to pay for the chance to get more than its value,

which fact clearly brings such machine within what is termed a 'gambling device.'

There are no Ohio decisions decisive of the question as based upon the fact of your inquiry. I find upon investigation, however, that there are a number of decisions from other states which hold such a machine to be a 'gambling device' where the operator of the machine in every instance receives value or something of value for the money he puts into such machine and with a chance of receiving more than the value of money he so puts into such machine."

Said opinion quoted from the following cases in support of the conclusion:

Meyer vs. State of Georgia, 51 L. R. A., 496;
Culliman vs. Hosmer, 100 App. Div. 148, 91 N. Y. Supp. 607;
Meeks vs. State (Texas Crim. App) 74 S. W., 9910;
State vs. Vasquez, 49 Fla., 126, 38 So., 830;
Lythe vs. State (Tex. Crim. App.) 100 S. W., 1160;
Lang vs. Merwin, 99 Maine Reports, 486.

In the case of Mills Operating Co. v. Toronto, 21 N. P. (N. S.) 525, the question was presented as to what constituted a gambling device under a village ordinance. Said ordinance provided as follows:

"If any person shall permit any game to be played for gain upon or by means of any gaming device or machine, in any building, booth, arbor, canal boat or water craft owned or controlled by such person, he or she shall, on conviction thereof, pay a fine not exceeding fifty dollars and pay the costs of prosecution."

The following is quoted from the opinion rendered by Judge Smith in said case:

" * * * Were said machines as constructed and operated, legal vending machines or were they illegal slot machines or gambling devices? * * *

From the facts it appears that by dropping a nickel in these machines, each person is guaranteed at least one package of chewing gum, and in addition thereto may receive from two to twenty checks in trade from the store of the lessee, Mr. Dawson.

It also appears from the cut that certain characters are on these machines representing certain cards, and that in accordance with the order or arrangement of these cards after a play would depend whether or not the player would receive one package of gum and possibly two to twenty trade checks

in return. The checks might be exchanged for articles in Mr. Dawson's store.

From these facts it clearly appears that this is a gaming or gambling device. There seems to be the impression abroad among the lessees of these machines so long as the player receives something of value in return for the money played, they are within the law and can not be prosecuted for conducting a gambling machine or device. That impression is clearly erroneous. Wherever the element of chance enters into the playing and the player has the opportunity to receive something for nothing, something without consideration, it comes within the provision of the law, prohibiting the operation of a gambling machine or device. There is no dispute among the authorities upon that proposition.

* * * * *

It is the element of chance in the game that makes it illegal; whether one receives something or whether he receives nothing is not material. If that were not the case every game of chance, every gambling device, could be legalized by giving to the player some consideration for the money which he wagers upon the game. These machines are therefore clearly within the law prohibiting the operating of a gambling device or machine as provided in the ordinance of the village."

In view of the foregoing, it seems that a machine such as you describe in your letter is a gambling device, the operation of which is prohibited by the laws of this state.

SUPREME COURT

MOTION DOCKET

10346—Earnest Prince vs. State of Ohio. (On rehearing). Motion for leave to file petition in error to the Court of Appeals of Franklin county. Overruled.

10374—Albert Schmitt vs. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Cuyahoga county. Overruled.

10380—Leo Melanowski vs. James Judy. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

10385—Oliver G. McCoy et al. vs. David Davis. Motion for an order directing the Court of Appeals of Coshocton county to certify its record. Overruled.

10410—W. E. Saunders, Admr., vs. Peter E. Smith. Motion for an order directing the Court of Appeals of Miami county to certify its record. Overruled.

10411—M. Burr Tallmage vs. The National Bank of Morrow County. Motion for an order directing the Court of Appeals of Morrow county to certify its record. Overruled.

10412—Hattie Frizzell vs. T. B. Mateer, Exr., et al. Motion for an order directing the Court of Appeals of Morrow county to certify its record. Overruled.

10413—Henry S. Swetland et al. vs. Harriet T. Miles. Motion for an order directing the Court of Appeals of Knox county to certify its record. Sustained.

10414—John H. Coss vs. The Public Utilities Commission. Motion by The Richland Public Service Co. to be made party defendant in error in cause No. 16480 on the general docket. Sustained.

10415—William E. Harris, Admr. vs. Hal C. Jeremiah et al. Motion for an order directing the Court of Appeals of Delaware county to certify its record. Overruled.

10416—Village of Crooksville et al. vs. William Kaslek et al. Motion for an order directing the Court of Appeals of Perry county to certify its record. Overruled.

10417—The Cleveland Railway Co. vs. Frances Stead, a minor. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

10423—Alex. Haggard vs. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Allen county. Overruled.

10424—William Dean vs. William Slack and Charles E. Jones. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

GENERAL DOCKET

16338—Kaufman Koppel vs. Ferdinand Badger, Sheriff of Hamilton county et al. Hamilton. Affirmed on authority of *In re Rauh*, 65 Ohio St., 128.

16347—Ex parte Delilah Berger; Habeas Corpus. Richland. Judgment affirmed on authority of *In re Rauh*, 65 Ohio St., 128.

16417—August W. Bruck vs. The Quickwithdrawal Bldg. Assn. et al. Hamilton. Judgment affirmed.

16418—Cora V. Bruck vs. The Quickwithdrawal Bldg. Assn. et al. Hamilton. Judgment affirmed.

16512—State of Ohio, ex rel. City of Toledo, vs. Charles F. Weiler et al., as the Commissioners of Publicity and efficiency of City of Toledo. *In Mandamus*. Writ allowed.

SECRETARY OF STATE

NEW CORPORATIONS

The M. and M. Co., Cleveland, \$1,000,000. J. C. McLean, W. B. Davis, J. A. Smith, Joe Smith, D. N. Turner.

The Cleveland Soda Water Co., Cleveland, \$65,000. P. George, A. K. Midas, K. Christoff, L. J. Washburn, J. G. Romanoff.

The Truck Sales and Service Co., Cleveland, \$50,000. E. Mohlar, S. W. Wyman, S. Graverman, M. W. Kastner, B. Feniger.

The Hub Building & Loan Co., Columbus, \$100,000. O. F. Ehring, G. Volkweih, N. A. Bates, G. W. Coffman, W. C. Bates, A. Laszlo, A. Shaffer.

The Ohio Valley Rendering & Fertilizer Co., Marietta, \$100,000. R. L. Joy, N. N. Thorniley, F. A. Jahn, W. B. Scott, N. E. Kidd.

The Grand County Oil and Gas Co., Cincinnati, \$100,000. M. Sparks, J. Mendelsohn, H. H. Freidman, H. N. Hermann, C. Hermann.

The Golly-Wog Manufacturing Co., Cleveland, \$10,000. H. H. Gau, J. F. Royal, M. Robson, W. McLane, J. A. Cline.

The Hudson-Essex Sales Co., Toledo, \$100,000. J. V. Mahoney, J. A. Cline, W. T. Smith, M. A. Patterson, H. M. Siering.

The Durbin Oil and Development Co., Cleveland, \$80,000. Wm. Durbin, L. C. Harding, P. C. Harding, F. Durbin, W. C. McDonnell.

The Straitsville Coal Co., Columbus, \$5,000. F. M. Spencer, G. H. Gibbs, E. E. Hazelton, A. T. Seymour, E. L. Pease.

The Dayton Friction Toy Co., Dayton, \$175,000. C. W. Dale, W. B. Wright, C. C. McCune, E. D. Miller, J. A. Oswald.

The New Albany Garage & Sales Co., New Albany, \$12,000. E. R. Burnside, A. E. Carpenter, F. B. Orien, V. T. Shetts, N. D. Kern, W. S. Ranney, C. B. Estle.

The Fern-O-Brand Co., Cincinnati, \$60,000. L. E. Collins, J. Fern, E. Poe, T. Fern M. Poe.

The General Woodwork Co., Cincinnati, \$75,000. J. M. Hellerich, J. J. Walsh, B. W. Remke, F. H. Knoblauch, B. Pellman.

The Rich-Sampler Knitting Mills Co., Cleveland, \$750,000. J. G. Kennedy, P. A. Sampler, L. L. Berkowitz, P. H. Schmidt, H. J. Stone.

The Pres-teel Manufacturing and Enameling Co., Cincinnati, \$50,000. H. N. Strauss, A. F. Lavercombe, G. C. Ebersole, M. F. Little, F. A. Heitzman.

The Ohio Valley-Homer Oil and Gas Co., St. Clairsville, \$300,000. J. W. Osborn, W. G. Lidwell, J. W. Devaul, E. J. Henkle, E. M. Wilkes, F. A. Hedgedorn, H. G. Finley.

The American Manufacturing Co., Dayton, \$100,000. N. Emmons, Jr., A. B. Hilton, Jr., J. W. Green, J. H. Hobstetter, I. DeBeuckelaere.

The Service Fisical Co., Toledo, \$10,000. G. G. Morrison, C. F. Weissenberger, C. Lowensohn, M. Foody, J. S. Baily.

The Premier System of Bakeries Co., Cleveland, \$25,000. H. S. DeGroot, J. Bloomburg, E. E. Wolf, H. A. Shipley, H. K. Spers.

The Brandts Chair Co., Celina, \$25,000. E. H. Morsman, E. Brandts, Walter Mersman, H. F. Cren, J. A. Roesner.

The Clifton Collar Co., Cincinnati, \$10,000. W. W. Crothers Jr., M. A. Levy, Robert Zivi, R. Hoffman, R. P. Crothers.

The Diamond Bronze Co., Cleveland, \$10,000. W. Walleck, P. Weisbarth, J. H. Thomas, G. F. Weisbarth, J. S. Kovach.

The Sey Building Co., Cleveland, \$150,000. L. E. Edwards, R. G. Young, J. R. Paton, Geo. S. Anderson, A. G. Warnke.

The Neff Lime Products Co., Neffa, \$30,000. A. Neff, H. A. Neff, A. T. Neff, J. F. Mellott, E. R. Lewis, H. B. Neff, Eugene McFarland.

The Orland Oil & Gas Co., Logan, \$30,000. E. R. King, D. C. Wills, L. W. Pilcher, M. H. Cherrington, J. L. Will.

The Appliance Stamping and Manufacturing Co., Cleveland, \$20,000. R. L. Corbett, J. W. Macklin, J. S. Petrie, C. M. Backus, M. L. Mackinnon.

The Lima Rubber Co., Lima, \$200,000. J. E. Grosjean, F. L. Maire, F. Cook, E. J. Maire, W. L. MacKenzie.

The Ashtabula Pythian Temple Co., Ashtabula, \$25,000. E. L. King, H. J. Fassett, W. A. Tilley, C. F. Schaffner, O. O. Wentling.

The Preston Brothers Stucco Co., Springfield, \$25,000. J. K. Preston, J. B. Preston, P. A. Pemce, Orris McGinnis, H. H. Preston.

The Metzgar Realty Co., Lorain, \$50,000. T. C. Metzgar, W. J. Moriarty, C. F. Bickel, A. E. Cameron, C. H. Hageman.

The Main Realty Co., Akron, \$10,000. H. J. Barnett, A. F. Barnett, N. Eisenbart, D. V. Kane, C. M. Meyers.

The Foreign Products Co., Cleveland, \$75,000. C. Roeckel, F. Reker, T. J. Carlen, G. Purpura, P. Purpura.

The Van Gorder Co., Cleveland, \$50,000. E. O. Van Gorder, G. Van Gorder, W. F. Kees, A. P. Howell, M. J. Walther.

The White Cross Radiator Co., Toledo, \$50,000. W. E. White, F. Serafinu, G. N. Lee, A. E. White, D. A. Lee.

The Zoo Ice Rink and Swimming Pool Co., Cincinnati, \$312,500. W. P. Anderson, H. W. Nichols, T. Briggs, O. De G. Vanderbilt Jr., J. Pollak.

The Auto Ignition Co., Youngstown \$50,000. J. M. Modarellie, R. G. Allen, C. V. Morrison, J. W. Rogers, E. L. Burns.

The Richardson Co., Toledo, \$5,000. S. C. Richards, Jr., James Bentley, H. L. Thompson, W. L. Milner, Louis F. Malloy, L. M. Rupp.

The Youngstown Home Baking Co., Youngstown, \$60,000. H. B. Woodruff, W. L. Malloy, E. A. Phelan, G. S. Ottenheimer.

The London Typesetting Co., London, \$15,000. R. M. Cheseldine, E. A. Brown, L. C. Payton, A. J. Chenoweth, E. S. Neese.

The Zane Stone Products Co., Middleburg, \$20,000. E. L. Heath, L. E. Fraul, W. H. Fleddeyalman, D. M. Sharp, C. E. Hartman.

The J. C. Heifner Manufacturing Co., Ashland, \$30,000. J. C. Heifner, S. Congder, O. J. Curfman, J. Switzer, C. C. Sherick.

The Pickerington Oil and Gas Co., Pickerington, \$30,000. H. S. Smith, W. K. Schwenk, C. J. Nessley, C. D. Bowers, A. Callin, W. H. Finkbone.

The Delphos Improvement Co., Delphos, \$100,000. F. H. King, A. J. Shenk, J. H. Jenkins, J. T. Thomas, Morgan Howells.

The Erie Rubber Mould & Machine Co., Sandusky, \$10,000. A. E. Rogers, A. J. Pejsa, G. E. Morgan, L. M. Sewell, E. W. McGraw.

The Palace Auto Sales Co., Fremont, \$150,000. F. A. Durnawald, M. Mogt, Charles Hess, C. F. Keating, A. J. Hoffman.

The Groveland Estates Co., Cleveland, \$15,000. E. J. Walsh, Mrs. H. Walsh, F. D. Squire, W. D. Squire, Nellie C. Smith.

The B. P. R. Transportation Co., Parma, \$2,500. S. G. Taylor, E. E. A. Metzgar, C. Hessler, H. M. Fransworth.

The Victor Radiator Co., Cleveland, \$200,000. A. W. Herdman, S. J. Smith, M. McKnight, E. F. Marcha, Vida Sanderson.

The Paragon Metal Products Co., Cleveland, \$500,000. E. H. Kron, W. L. Roberts, A. W. Herdman, V. Sanderson, M. Blackmon.

The Lucky Realty Co., Akron, \$105,000. D. M. Siff, E. H. Wiener, M. Nobil, M. Goldman, F. B. Burch.

The Citizens Union Commerce Securities Co., Cleveland, \$5,000. H. T. Clark, F. S. Whitcomb, H. L. Barkdull, E. C. Dempsey, E. R. Diehm.

The National Airway Service Co., Akron, \$30,000. L. F. Ross, H. C. Norris Jr., E. W. Lefquest, L. J. Myers, A. W. Morton.

The Davies Glass and Manufacturing Co., Martins Ferry, \$350,000. E. K. Hoge, A. T. Selby, W. D. Carlile, J. E. Reynolds, A. A. Davies.

The L. S. G. No. 1 Co., Akron, \$10,000. H. T. Schlegal, E. W. Swinehart, M. E. Fout, L. A. Bettes, Norma Goettel.

The Catholic Community Center Co., Eteubenville, \$50,000. G. Hornung, J. E. Hannan, E. F. Feist, J. J. Powers, J. Longo, J. S. Keane.

The Englewood Building and Loan Association, Englewood, \$100,000. W. L. Waymire, C. A. Johnson, R. H. Welbaum, C. Wenger, J. B. Whitehead, C. O. Lighter.

The Jefferies, Engineering & Supply Co., Cincinnati, \$10,000. S. J. Jefferies, R. A. Sunshine, G. M. Glanford, N. J. Utter, F. Woodward.

The Import Trading Co., Cleveland, \$50,000. D. F. Klein, E. M. Klein, E. H. Klein, S. N. Weitz, S. E. Elsner.

The H. E. Albert Co., Dayton, \$30,000. H. E. Albert, B. A. Barlow, L. E. Uhling, M. Glaser, V. Schaeffer.

The Academy Amusement Co., Steubenville, \$50,000. Thomas McGarry, Steve Morris, E. Blankensop, A. G. Davis, J. D. Gardner.

The Safety Home Co., Cleveland, \$10,000. F. T. Kovar, F. P. Charvat, J. V. Klima, J. B. Oviatt, A. E. Rogers.

The Fredericksburg Realty Co., Fredericksburg, \$20,000. E. Z. Aylsworth, A. B. Stutz, V. O. Sterling, G. O. Crosby, A. P. Harrison.

The Economy Investment & Mortgage Co., Cleveland, \$200,000. J. O. Ellen, F. W. McLean, L. A. Cordery, J. A. Eshner, D. Gould.

The Mutual Auto Supply Co., Alliance, \$50,000. R. M. Vick, O. M. Diser, H. C. Koehler, L. C. Strong.

The Evans-Turner Co., Columbus, \$105,000. J. E. Martindill, J. W. Gheen, N. G. Martindill, B. Gheen, E. W. Gheen.

The Randolph Land & Lumber Co., Cleveland, \$5,000. O. D. Eshelman, J. H. Frank, Frank Linner, J. Bellinger, H. H. Hoard.

The Cleveland Toupe and Wig Co., Cleveland, \$15,000. N. McGiffin, W. F. Mauser, E. R. Dolin, J. B. Bolton, L. D. Hedrick.

The Citizen's Realty and Loan Co., Galion, \$25,000. O. Raudabaugh, T. A. Weis, C. H. Howick, R. B. Morrison, S. L. Evans, J. E. Raudabaugh.

The Park Terrace Land Co., Columbiana, \$25,000. C. E. Smith, L. A. Schaeffer, P. H. Felger, J. A. Todd, H. H. Roller.

The Hazen-Jones Co., Cincinnati, \$10,000. A. T. Hazen, W. C. Taylor, L. Dollie, A. B. O'Donnell, J. D. Ellis.

The United Flour Co., Cleveland, \$50,000. J. W. De Cumber, L. S. Greenwood, G. J. Hagek, J. H. Hawkins, W. C. Price.

The General Oil Holding Co., Cleveland, \$2,000,000. C. H. Bell, T. F. Fox, E. Murphy, E. Ross, E. Schults, J. H. Wittenbrook.

The Celina Milling Co., Celina, \$15,000. W. H. Witter, R. H. Witter, C. C. Chapman, F. R. Collins, D. M. Chapman.

The Cleveland Sales & Manufacturing Co., Cleveland, \$25,000. E. P. Chamberlin, H. J. Hollander, Louis Bloomfeld, H. Jolloy, H. D. Crawford.

The Columbia Home Building Co., Cleveland, \$50,000. S. J. James, J. Csaszar, W. J. Kennedy, I. Csaszar, E. James, S. A. Kennedy.

The Union Labor Home Co., Lorain,

\$15,000. H. Hill, J. O. Brown, M. Hennis, H. A. Meister, G. O. Gleason.

The Spaulding Coal and Supply Co., Elyria, \$50,000. E. E. Spaulding, D. A. Baird, J. Gomey, B. Spaulding, C. W. Spaulding.

The Greenville Farmers Exchange Co., Greenville, \$50,000. H. E. McGowen, Wm. Steffen, C. F. Meyer, W. E. Stahl, B. G. Eidson, A. C. Stocker, F. Katzenberger.

The Rural Store Co., Milton Center, \$30,000. C. Cox C. C. Sockman, A. Henning, L. F. Hull, Howard R. Hutchinson.

The Ques-Mar-Vo Cigar Distributors Co., Cleveland, \$100,000. N. Schnabel, Z. M. Cook, H. G. Schnabel, R. T. Helm, H. H. Snovel.

The Oberlin Telephone Co., Oberlin, \$150,000. C. K. Whitney, J. V. Hill, J. N. Stone, R. J. Stone, H. L. Bassett.

The Harvey Building and Loan Co., West Mansfield, \$200,000. O. L. Harvey, I. R. Winner, E. F. Bechtel, R. B. Harvey, E. P. Harvey.

The Charles B. Deardorff Candy Co., Dayton, \$42,000. C. B. Deardorff, G. A. Leiheber, M. J. Leihgeber, M. J. Deardorff, V. Schaeffer.

The Lease-Purchase Homes Co., Columbus, \$31,000. C. C. Williams, S. Nash, J. F. Hays, W. J. Hays, J. C. Moore.

The General Chemical Co., Cleveland, \$5,000. A. J. Schanfarber, B. D. Gordon, A. M. Nell, S. Ulmer, F. A. Mertz.

The K. of C. Co., Cleveland, \$10,000. Sidney N. Weitz, I. M. Ross, H. Ross, H. Pott, F. Wharton, F. B. Fishman.

The Criterion Cap Co., Cincinnati, \$20,000. N. Biederman, W. L. Benham, H. C. Bolsinger, J. Bolsinger, W. C. Winans.

The Cofall-O'Neill Co., Cleveland, \$10,000. W. E. Daly, H. M. O'Neill, S. B. Cofall, H. C. Banjar, J. J. Laughlin Jr.

The Master Truck Sales Co., Dayton, \$10,000. U. C. Jacobs, W. F. Muth, L. M. Jacobs, O. C. Hall, I. M. Hall.

The Dola Farmers Exchange Co., Dola, \$30,000. C. D. Robinson, J. R. Eibling, F. Dirmeyer, R. E. Minter, G. Warmbrod, J. M. Harris.

The Hedden Wells Realty Co., Akron, \$50,000. C. H. Wells, W. H. Spicer, A. H. James, A. A. Stahl, G. C. Ginger.

The Alpine Oil Co., Toledo, \$500,000. W. C. Moore, L. W. Marks, H. H. Elwood, F. C. Moore, E. D. Bloom.
The Roosevelt Heights Co., Akron, \$160,000. F. W. Ganyard, H. S. Davidson, J. T. Miller, F. McDonald, R. L. Booth.

The Montclare Land Co., Akron, \$25,000. A. F. O'Neill, J. C. Zuendel, W. E. Boyle, E. A. Bradley, L. G. Howard.

The Ohio Raincoat Co., Galion, \$20,000. H. Fellenbaum, H. Cohen, M. Roth, S. Mittman, H. R. Sehuler.

The McCord-Harris C., Columbus, \$30,000. H. McCord, J. M. Harris, F. J. Wright, E. M. Kirk, F. H. Game.

The Commercial Aero Service Co., Monroeville, \$15,000. Dr. C. D. Bashore, C. A. Miller, B. C. Pilkey, M. D. A. F. Schug, C. L. Powley.

The Brady Farmers' Co-operative Co., West Unity, \$20,000. C. W. Murdock, B. W. Opdycke, E. Smith, H. Allion, D. A. Croninger.

The Greenbaum Drug Co., Toledo, \$10,000. J. L. Greenbaum, Sigmond Sanger, Herman Winkler, A. J. Kranz, M. Siglow.

Increases

The Smith Scale Co., Columbus, \$50,000 to \$200,000.

The Reynolds Aluminum Co., New Washington, \$20,000 to \$50,000.

The General Fixture & Supply Co., Columbus, \$50,000 to \$60,000.

The Aluminum Fix Co., Cleveland, \$50,000 to \$100,000.

The Phoenix Country Club Co., Cincinnati, \$25,000 to \$35,000.

The Miller and Hadley Co., Toledo, \$200,000 to \$500,000.

The Sherwin-Williams Co., Cleveland, \$21,000,000 to \$60,000,000.

The Toledo Merritt Co., Toledo, \$50,000 to \$100,000.

The Jas. Holan Manufacturing Co., Cleveland, \$150,000 to \$300,000.

The Toledo Glove Manufacturing Co., Toledo, \$150,000 to \$350,000.

The Lewisburg Tobacco Co., Lewisburg, \$10,000 to \$50,000.

The Domestic Electric Co., Cleveland, \$250,000 to \$500,000.

The Miami Loan & Building Association of Dayton, \$5,000,000 to \$10,000,000.

The Barber Co., Painsville, \$15,000 to \$20,000.

The Erie Food Products Co., Sandusky, \$100,000 to \$250,000.

The S. & O. Engraving Co., Akron \$50,000 to \$150,000.

The O. K. Dern Shoe Co., Cleveland, \$60,000 to \$200,000.

The Ringgold Building & Loan Co., Cincinnati, \$500,000 to \$750,000.

The Cleveland Wholesale Dry Goods Co., Cleveland, \$15,000 to \$50,000.

The Bromwell Brush & Wire Goods Co., Cincinnati, \$300,00 to \$500,00.

The Wickliffe Lumber Co., Wickliffe, \$50,000 to \$100,000.

The Beach Leather Co., Coshocton, \$50,000 to \$100,000.

Columbus, \$25,000 to \$125,000.

The C. B. Vacuum Street Cleaner Co.,

The Steubenville Coca Cola Bottling Co., Steubenville, \$25,000 to \$50,000.

The Echo Coal Co., Columbus. \$10,000 to \$50,000.

The Universal Milking Machine Co., Columbus, \$166,000 to \$500,000.

The Purity Cannel Coal Co., Prestonburg, \$15,000 to \$25,000.

The Batavia Realty Co., Batavia, \$15,000 to \$25,000.

The J. H. Burns & Bro. Co., Mansfield, \$25,000 to \$100,000.

The Representative Construction Co., Cleveland, \$10,000 to \$250,000.

The Purpus Fibra Products Co. Dayton, \$25,000 to \$75,000.

The Bishopric Manufacturing Co., Cincinnati, \$100,00 to \$250,000.

The Wedler and Blanchard Automatic Machine Co., Cleveland, \$10,000 to \$100,000.

The Queen Co., Columbus, \$20,000 to \$100,000.

The Halle Brothers Co., Cleveland, \$3,000,000 to \$7,000,000.

The Robert Lovinger Co., Cleveland, \$10,000 to \$50,000.

The Richardson Co., Toledo, \$5,000 to \$1,000,000.

The Standard Steel Casting Co., Cleveland, \$1,000,000 to \$1,300,000.

The American Rubber & Tire Co., Akron, \$675,000 to \$4,000,000.

The Kent Lumber Co., Akron, \$40,000 to \$100,000.

Decreases

The Guernseyware Co., Cambridge, \$250,000 to \$200,000.

The Uyratis Co., Cleveland, \$100,000 to \$50,000.

The Stearns & Foster Co., Cincinnati, \$2,700,000 to \$2,200,000.

The Independent Distributing Co., Columbus, \$100,000 to \$75,000.

PUBLIC UTILITIES COMMISSION

1878—City of Akron, et al., Complainants, vs. The Ohio State Telephone Company, Defendant.

Finding

This is a protest against the proposed schedule of rates for service at Akron and Barberton, filed by The Ohio State Telephone Company to become effective February 1st, 1920, and upon hearing of this matter, suspended pending a final order herein.

The rates sought to be instituted by the new schedule might not be unjust and unreasonable, for an adequate service, but both the testimony in the record, and the investigation of the Commission's engineers show that the service is far below what it should be, resulting from the use of deteriorated equipment and a lack of competent help.

When the last schedule was permitted to go into effect at these points, against the protest of the subscribers, it was claimed by the Company that a greater income would enable it to render efficient service, but it seems that the service has not improved. The Commission fully realizes the difficulty of maintaining an efficient force, especially in the City of Akron, where there are so many industries bidding for labor at high wages, but the Commission cannot see its way clear to permit the constant increasing of the price of a service which is inadequate. When a utility finds it absolutely necessary to increase its rates to meet the higher cost of operation, it should first demonstrate its ability to furnish a service which will warrant such increase.

The report of the Commission's engineers in this matter points out various defects in the service, and suggests remedies whereby it may be improved, a copy of which will be forwarded to the Telephone Company.

This matter will not be finally disposed of at the present time, but the Company will be given an opportunity to carry out the recommendations of the engineers, and improve its service. If it is able to show its ability and willingness to render an adequate

service, further consideration will be given to its proposed schedule, when such efficient service is being rendered.

For the present the Commission holds that the rates now in effect are adequate for the kind of service which is being rendered, and no increase will be permitted at this time. This investigation will be continued pending the improvement of service, after which further consideration will be given to the matter of increased rate.

3

1936—In the Matter of the Joint Application of The Chesapeake and Potomac Telephone Company of West Virginia and The Winona Central Telephone Company. Prayer Granted.

(Dated March 18, 1920.)

This day, (it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the joint application of The Chesapeake and Potomac Telephone Company of West Virginia, (a corporation organized and existing under and by virtue of the laws of West Virginia and duly authorized to do business in the State of Ohio), and The Winona Central Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent to and approval, by this Commission, of the making, by said applicants, of a certain contract, dated February thirteenth, 1920, providing, among other things and in chief for the retention of the physical connection now existing between their respective systems and the continued interchange of toll business thereby:

Upon consideration whereof and being fully advised in the premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purposes of this proceeding, that the convenience of the public will be promoted by the retention of said physical connection and the continued interchange, by the applicants, of toll business thereby, and that, thereby, the public will be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for the retention of said physical connection and the continued inter-

change of toll business thereby should be granted. It is therefore,

Ordered, That said The Chesapeake and Potomac Telephone Company of West Virginia and said The Winona Central Telephone Company be, and hereby they are authorized to retain the physical connection between their respective system and to continue to interchange toll business as provided by law. It is further

Ordered, That nothing shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceedings involving said matters.

3

No. 761—In the Matter of the Application of The Cleveland and Sharon Rapid Transit Railway Company for Authority to Issue \$75,000.00 Capital Stock and \$195,000.00 First Mortgage, Six Per Cent. Thirty Year Bonds. Third Supplemental Order.

(Dated March 16, 1920.)

This Commission having, by Second Supplemental Order made and entered herein as of date November nineteenth, 1919, modified the order made and entered herein as of date December twenty-seventh, 1918, as amended May nineteenth, 1917, to permit and authorize the use, by the applicant, of the proceeds arising from the sale of five thousand dollars, par value, of its common capital stock for the purchase of the electric light plant at Burton, Ohio, and suspended, pending the further order of the Commission, the authority theretofore granted said applicant to issue and dispose of additional capital stock of the par value of ninety-five thousand dollars and first mortgage, six per cent. bonds of the principal sum of two hundred thousand dollars;

And the Commission having this day, by orders duly made and entered in proceedings Nos. 1932 and 1933, consented to and authorized the purchase of said electric light plant by The Burton Public Service Company and the capitalization of such purchase by the issue of five thousand dollars, par value, of the capital stock of said The Burton Public Service Company.

And the Commission having this day, upon the application of the said Earl C. Bliss rescinded the order, made and entered as of date November nineteenth, 1919, in proceeding No. 1734, authoriz-

ing the purchase, by the applicant herein, of said electric light plant, it is

Ordered, That the authority granted by the Second Supplemental Order, made and entered herein as of date November nineteenth, 1919, to issue and dispose of common capital stock of the par value of five thousand dollars to capitalize the purchase of the electric light plant at Burton, Ohio, be, and hereby it is revoked, and that the authority to issue said capital stock be, with the aforesaid capital stock of the par value of ninetyfive thousand dollars and first mortgage bonds of the principal sum of two hundred thousand dollars, suspended pending the further order of this Commission.

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No. 1734—In the Matter of the Joint Application of Earl Bliss, the owner of the Electrical Utility at Burton, Ohio, and The Cleveland and Sharon Rapid Transit Railway Company for Authority to Sell and Purchase Such Utility. Former Order Rescinded.

(Dated March 16, 1920.)

This day this matter came on for further consideration upon the petition of Earl C. Bliss for a rescision of the order, made and entered herein as of date November nineteenth, 1919, authorizing him to sell and The Cleveland and Sharon Rapid Transit Railway Company to purchase the electric light plant at Burton, Ohio, and the Commission having, by order this day made and entered in proceeding No. 1932, authorized the said Earl C. Bliss to sell, and The Burton Public Service Company to purchase said public utility property, it is

Ordered, That the order made and entered herein as of date November nineteenth, 1919, be, and hereby it is rescinded.

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ATTORNEY GENERAL

A Receiver of a Corporation Appointed by a Court is Required to List Property in His Possession for Taxation as of the Day Preceding the Second Monday of April in the Manner as Provided in Section 5372-1 General Code.

No. 1032—(Opinion Dated Feb. 27, 1920.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

“Is the receiver for a corporation required to file a return of the personal property of the corporation for taxation as of the first day of January or as of the day preceeding the second Monday in April?”

and enclosing a letter from Messrs. Bayly, Simmons & DeWitt, Attorneys at Law, Cleveland.

Section 5404-1 G. C., which changes the time as of which certain personal property returns shall be made from the day preceding the second Monday of April to the first day of January, refers to “incorporated companies” only (108 O. L., Part I, 131-132). Moreover, the code number chosen by the general assembly for the newly enacted section further evinces an intention to make this section a part of the group of statutes beginning with section 5404 of the General Code and dealing exclusively with returns made by incorporated companies.

For most obvious reasons a return made by a “corporation” must be made by some human being acting for the corporation. The language of section 5404 imposes this duty, as follows:

“The president, secretary, and principal accounting officer of every incorporated company, * * shall list for taxation, verified by the oath of the person so listing, etc.”

Section 5406, which is part of the same group of sections, adds the words “or agent.”

A receiver appointed by a court is neither an officer nor an agent of the corporation, and does not come appropriately within

the class of persons indicated, if not fully expressed, by the enumeration found in the statute.

Moreover, as pointed out by counsel, the case of receivers is expressly dealt with in the statute, section 5372-1, which provides, in part, that

"Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise in the possession or control of a person as * * * receiver * * *, or otherwise, (naming several fiduciary capacities) on the day preceding the second Monday of April in any year, on account of any person or persons, company * * or corporation, shall be listed by the person having the possession or control thereof and be entered upon the tax lists and duplicate in the name of such * * receiver, * * adding to such name words briefly indicating the capacity in which such person has the possession of or otherwise controls said property, and the name of the * * corporation to whom it belongs * * *."

This section is not expressly repealed or amended by the legislation of 1919, and I am unable to find any such inconsistency between the two sections as to work any partial implied repeal of the earlier one by the enactment of the latter one. In fact, prior to the enactment of section 5404-1 the true legal situation was that a receiver for a company reported, not under section 5404 et seq. G. C., but under section 5372 thereof.

It follows that the contention of counsel is correct, and that the receiver should list the property in his possession in such capacity as of the day preceding the second Monday of April.

The commission also requests the opinion of this department upon the further question as to whether a receiver appointed in winding up proceedings or in foreclosure proceedings, and operating under an order of court directing liquidation of the assets of the company, without any continuation of its business, is required to list any property in his possession for taxation. Counsel seemingly make a contention to the general effect that no such duty exists. You refer to an opinion at page 674 of the opinions of the Attorney General for the year 1916.

This opinion dealt with section 5372-1 G. C., which was new in 1915, and with the question as to the effect of the express inclusion in the section of the words "assignee" and "receiver" upon the doctrine of *McNeill v. Hagerty*, 51 O. S. 255, and *French v. Bobe*, 64 O. S. 323. It was pointed out in the course of that opinion that *McNeill v. Hagerty* was based upon the omission of the word "assignee" from the statute defining the duty of persons acting in

representative capacities to list property for taxation, as it then existed. At that time the word "receiver" was in the law, and in *French v. Bobe* the position of an assignee operating by the consent of the creditors and under order of court the business of the company, instead of winding it up immediately, was held to be in effect a receiver within the meaning of the statute requiring receivers to list, rather than an assignee within the meaning of the *McNeill* case, based as it was upon the omission in the statute. It was pointed out that there was no constitutional or common law principle of sufficient force to control the discretion of the legislature in exempting officers of court and persons representing creditors from listing property in their possession for taxation. The conclusion was reached that after the enactment of section 5372-1 assignees and receivers, whether continuing the business under order of court or engaged in winding up and liquidating assets, are required to list for taxation the property in their possession on listing day.

I fully concur in the opinion just described.

Accordingly, it is my opinion that in the case under consideration the receiver is not obliged to list the personal property and other assets in his possession for taxation as of the first day of January, and may lawfully proceed at the present time to make distribution; but should any property remain in his possession or subject to his control as receiver on the day preceding the second Monday of April, it will be his duty at that time to list such property for taxation in the manner pointed out by section 5372-1 G. C.

*

Probate Judges are not Permitted to Make Any Charge for Services in Furnishing Certificates of Births, Deaths, and Marriages in the Matter of the Procurement of Compensation or Insurance Under Federal Enactments to Soldiers or Their Dependents. Section 1604 General Code Provides That Such Services Should be Performed Without Charge.

No. 1035—(Opinion Dated February 27, 1920.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your letter requesting my opinion upon the following question:

"Section 1604, General Code, provides that probate judges shall administer oaths and make certificates in pension and bounty cases without compensation. Would this section permit the probate judges to furnish free certificates of births, deaths or marriage in the matter of the procurement of compensation or insurance due a soldier of the world war under the recent Federal enactments? We ask this question because of the requirements of the county salary law which provides that officers named therein shall tax and collect the fees allowed by law for the benefit of the fee funds of their offices."

Section 1604 G. C. provides:

"The probate judge shall administer oaths, and make certificates in pensions and bounty cases, without compensation."

It is also noted in this connection that section 2905 G. C., in reference to the clerk of the court of common pleas, provides as follows:

"The clerk of courts shall make no charge whatever for certificates made for pensioners of the United States government, or any oath administered in pension and bounty cases, or on pension vouchers, applications, or affidavits."

The material question presented for determination by your inquiry is whether or not the compensation or insurance to be paid under the present laws relating to the federal war risk insurance is a "pension" or "bounty," within the meaning of section 1604, supra. The following definition for "pension" is found in 30 Cyc. 1368:

"A pension may be defined as a periodical allowance of money granted by the government for services rendered, in particular to a soldier or sailor in connection with a war or with military operations."

"Bounty" in 9 C. J. 300 is defined as follows:

"'Bounty' is defined to be an unusual or additional benefit conferred on, or a compensation paid to, a class of persons; money paid or a premium offered to encourage or promote an object, or to procure a particular set or thing to be done; a sum of money or other things given, generally by the government, to certain persons for some service they have done, or are about to do, the public.

As used in statutes relative to the enlistment of soldiers, bounty means a payment made to procure or induce soldiers to enlist. It is distinguished in some cases from a gratuity for services already rendered, while in others it is said that bounty

need not be promised before the performance of the service, but that it may come after as a gratuity for services already performed."

Under the war risk insurance act there are various provisions for the payment of periodical allowances to those who have properly been in the service of the government in connection with its military operation in the world war, or to their dependents. While it is true that there are certain provisions of said act that create contracts of insurance between the government and those in the service, when taken advantage of by those in the service, yet these provisions are not compulsory and those in the service may receive certain compensation or periodical allowances irrespective of whether they have taken advantage of said insurance provisions or not. It was the intent of this act to supersede the pension laws and it is evident that any compensation or allowances provided, other than those arising by reason of the contracts of insurance, is clearly within the meaning of the definitions and statutes relating to pensions and bounties.

While, as above stated, the provisions enabling soldiers to obtain further protection by complying with certain conditions of the war risk insurance law, when taken advantage of by those in the service, create obligations in the nature of contracts of insurance, it is believed that a careful analysis of said law will disclose that this contract comes within the definition of pension and bounty. In the beginning there was a period in which under the provisions of said act all were regarded as having been insured, regardless of whether they had taken any steps to obtain further protection. Again, no further physical examination was required of those seeking to take advantage of said insurance and the advantages of said insurance are limited to those in the military service or to those who have performed such service, all of which tends to establish the proposition that insurance paid under the provisions of said act is a gratuity or allowance made by the government as a reward to soldiers for services rendered by them in the defense of their country. It has long been the policy of this state to subject those who have served in the United States army to as little expense and inconvenience as possible in the recovery of any pension or bounty to which they may be entitled on account of said service.

It is believed that the recent federal enactments relative to compensation or insurance to be paid to soldiers or their dependents in effect provides for a "pension" or "bounty" within the meaning

of section 1604, supra, and it is not only permissible for probate judges to furnish free of charge certificates of births, deaths and marriages in the matter of the procurement of said compensation or insurance, but said probate judges under the provisions of said Section 1604 are prohibited from making any charge for such services.

✱

Where the Residence of an Alleged Insane Person is Known a Probate Court Cannot Properly Acquire Jurisdiction Unless the Alleged Insane Person Has Acquired a Legal Settlement in the County by Having Resided Therein for the Period of Twelve Months. On the Other Hand, Where the Alleged Insane Person is a Non-Resident of the State or His Residence is Unknown a Probate Court May Take Jurisdiction for the Purpose Contemplated in Sections 1819 and 1820, General Code.

No. 1063—(Opinion Dated March 9, 1920.)

Hon. John Coonrod, Probate Judge, Fremont, Ohio.

Dear Sir: Your letter of recent date is as follows:

"In Section 1953 G. C. the form of affidavit to be filed in insanity cases must be substantially as follows:

"The State of Ohio _____ County ss:

_____, the undersigned, a citizen of _____ county, Ohio, being sworn, says that he believes _____ is insane, (or, that in consequence of his insanity, his being at large is dangerous to the community.) He has a legal settlement in _____ township, in this county.

Dated this _____ day of _____, A. D. _____.

In order to give the Probate Court jurisdiction in insanity cases, must the alleged insane person have resided continuously in this county for twelve consecutive months as is provided by Section 3477 G. C., which defines legal settlement?"

The opening paragraph of Section 1935 G. C., to which you refer, is as follows:

"For the admission of patients to a hospital for the insane, the following proceedings shall be had. A resident citizen of the proper county must file with the probate judge of such county an affidavit, substantially as follows:" (Then follows the form of affidavit set out in your letter).

Section 3477 G. C. provides in part:

"Each person shall be considered to have obtained a legal

settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, without relief under the provisions of law for the relief of the poor, * * .”

An investigation discloses that the term “legal settlement” was used in an act entitled “A law for the Relief of the Poor,” declared by the governor and judges of the northwest territory to be a law in 1795, and that in various repeals and amendments down to the enactment of Section 3477, supra, which relate to the same subject as the original law, the same term has been used with the same meaning.

The form of affidavit as set forth in Section 1953, supra, was first prescribed in an act of the legislature passed April 7, 1856 (4 Curwen, 2740) which related to the care of idiots and the insane. Section 41 of said act empowered probate judges to appoint guardians upon proof that any person, a resident of the county or having a “legal settlement” in any township thereof, was was insane. Section 62 of said act authorized the county commissioners to allow a sum of not to exceed fifty dollars per year for the support of an idiot or insane person having a “legal settlement” in any township of the county.

Section 32 of said act provided as follows:

“Paupers, idiots and lunatics not within the meaning of this act, and those discharged from the asylum shall be provided for in the same manner as other poor.”

Inasmuch as the term “legal settlement” was used in this act and said act makes references to the poor laws, it is believed that the term “legal settlement” as used in the form of affidavit refers to the same legal settlement as used in Section 3477 G. C. Therefore, it is essential that the alleged insane person, where his residence is known, must have resided in the county for a period of twelve months before the probate court can legally acquire jurisdiction. The object of the law seems to be that the burden of supporting an insane or indigent person shall be cast upon the county wherein he has legal settlement and to protect the county in which he is temporarily residing from liability for his support.

Each county of the state is entitled to its quota of patients to the state hospital for the insane in its district which seems it is not required to exhaust except in he committing of patients having a proper legal settlement in the county.

However, in this connection consideration must be given to

Sections 1819 and 1820 G. C., which relate to the procedure that shall be taken by the superintendent of a hospital or a probate judge in cases wherein the alleged insane person is a non-resident of the state or his residence is unknown.

Section 1819 G. C. provides:

"If the judge or superintendent finds that the person which commitment or admission is requested has not a legal residence in this state, or his legal residence is in doubt or unknown, and is of the opinion that such person should be committed or admitted to such institution, he shall notify without delay the Ohio board of administration, giving his reasons for requesting commitment or admission."

Section 1820 G. C. provides:

"The Ohio board of administration by a committee, its secretary, or such agent as it designates, shall investigate the legal residence of such person, and may send for persons and papers and administer oaths or affirmations in conducting such investigation. At any time after investigation is made, and before or after the admission, or commitment to such institution, a non-resident person whose legal residence has been established may be transported thereto at the expense of this state."

In view of these sections it would seem that a court can not properly carry out the provisions therein, unless it has taken jurisdiction.

It therefore is the opinion of this department that where the residence of an alleged insane person is known a probate court can not properly acquire jurisdiction unless the alleged insane person has acquired a legal settlement in the county by having resided therein for the period of twelve months. On the other hand, where the alleged insane person is a non-resident of the state or his residence is unknown a probate court may take jurisdiction for the purpose contemplated in Sections 1819 and 1820 G. C.

It is believed that the view herein taken is in accord with an opinion rendered by my predecessor reported in Vol. III, page 2037, Opinions of the Attorney General for 1917.

Section 2, of House Bill No. 558 is a Valid Enactment; the Bill as a Whole is Valid; and the Powers of the Special Auditing Committee Provided for in Said Section 2 are as Follows:—To Acquire as a Condition of Payment, and if Deemed Necessary by the Committee, the Production of Such Books, Papers, Statements and Other Evidence as Will Exhibit to the Committee the Amount Claimed by Each Claimant, the Nature of the Transaction Giving Rise to the Claim, and Such Itemization Thereof as is Possible in the Nature of the Case and Which Will Tend to Enable the Committee to Correct the Items and the Total Where They are Capable of Correction; and to Pay on the Basis of Such Corrections But Not in Excess, of Course, of the Amount Appropriated. On the Basis of Such Investigations to Identify the Claims Presented to the Committee in all Legal Respect With the Claim Approved by the Legislature, Not Only in Amount But Also in Substance, as to Each Detail of Each Transaction Which is Capable of Separate Consideration; and to Pay Only on the Basis of Such Separable Transactions as Represent the Transactions Which the Legislature has Approved and Thus Stamped as Valid and Just.

No. 1062—(Opinion Dated March 9, 1920.)

Hon. J. E. Harper, Budget Commissioner, Columbus, Ohio.

Dear sir: Your letter of recent date requests the advice of this department as to the powers of the special auditing committee designated by Section 2 of House Bill No. 558.

The section in question is as follows:

“The monies herein appropriated shall be paid upon the approval of a special auditing committee consisting of the major appointee authorized by section 270-5 of the General Code, commonly known as the budget commissioner, the attorney general, the auditor of state, the chairman of the finance committee of the senate and the chairman of the finance committee of the house of representatives. Such auditing committee is hereby authorized and directed to make careful inquiry as to the validity of each and every claim herein made and pay only so much thereof as may be found to be correct and just.”

The act in which the section appears is entitled “An Act to make sundry appropriations.”

Following Section 2 appear numerous items classified as follows:

Claims arising out of contract; damage to property; payment for services; personal damage, refunders; salary claims (which seem to include reimbursement for personal expenses incurred); unpaid bills; current expenses; capital improvement; "miscellaneous;" and permanent improvements.

It will be observed that many of the appropriations are not for claims at all, but constitute the setting aside of moneys to pay liabilities hereafter to be incurred; while the character of the claims arising out of the past transactions included within the bill is most multifarious.

The words evidently requiring construction are found in the second sentence of Section 2, which may be briefly analyzed. In the first place, the committee is declared to be an "auditing" committee. The word thus used is suggestive of a meaning which is to be given to the entire passage. The primary meaning of this word may be given, in the words of the Standard Dictionary, as follows:

"An official examination of accounts, and their verification by reference to vouchers, etc."

The same term is defined in the Century Dictionary in a similar way. In fact, all accepted definitions seem to follow that of Webster, which is as follows:

"An examination of an account or of accounts, with the hearing of the parties concerned, by proper officers, or persons appointed for that purpose, who compare the charges with the vouchers, examine witnesses, and state the balance."

Properly speaking, therefore, an "audit" can only be made of a liquidated account where verification by means of vouchers based on already existing standards can be had. The term does not have appropriate reference to the process of arriving at a settlement of an unliquidated claim. From the fact that many unliquidated claims are included within the scope of the bill however, the word just discussed can not be given a strictly limiting effect in this context.

The committee, being primarily an auditing committee, is then directed to make inquiry as to the validity of each claim and to pay "only so much thereof as may be found to be correct and just."

The word "claim" need not be defined at the present time, although, as pointed out, some of the appropriations will not ripen into "claims" until work authorized to be done by the appropria-

tion has been done and payment is asked for. Neither is it felt that there is any doubt about the meaning of the word "correct."

The two words the meaning of which must be carefully weighed in order to give a lucid interpretation of the section are the words "validity" and "just."

The first of these words is defined in the Standard Dictionary as follows (in legal sense in which it is evidently employed):

"Strength or soundness in point of law."

The adjective is defined as follows:

"Legally sound, both as to form and substance."

The non-technical meaning of the adjective is given as follows:

"Supported or defended by evidence which is sound and convincing; founded on truth; capable of being proved; sound; just; good."

Webster gives the following meanings for the adjective among others:

"Founded in truth; * * * supportable by law or right."

The word "just" offers some difficulty because as defined in Webster and the other older dictionaries this word is substantially synonymous with the meaning which must be given to the word "correct" in the same context, whereas it is clearly intended to mean something more. For example, Webster's first meaning is:

"Conforming or conformable to rectitude; not doing wrong to any; violating no right or obligation; equitable; upright; honest; true."

He also gives the following among others.

"Exact; proper; moral; regular."

It is felt that the idea that was evidently in the legislative mind is better expressed by the Standard Dictionary, as follows:

"Based on or conforming to the principles of justice; impartial; legitimate; as, a just claim."

It is the opinion of this department that the word "correct" refers to the idea of mathematical verity, and the word "just" refers to the idea of the legal obligation (perfect or imperfect) also inherent in the word "validity." In other words, an examination is to be made under this section into the validity of each claim, i.e., its validity in point of correspondence in amount with the vouchers,

etc. to be examined in the course of the audit, and also its validity in point of law as an obligation of the state (though perhaps only a moral one). The audit is to examine the validity of each claim from both of these stand-points. If a claim is shown to be partially invalid from either stand-point, it is not to be entirely rejected but so much thereof as represents that which is valid is to be paid.

In each case there must be a "claim." In some of these instances this will be more or less of a formality but some evidence of the actual occurrence of the transaction on account of which the appropriation has been made must be before the committee in order that it may discharge its functions. Having evidence as to the amount claimed, the committee should then take account of whether or not it is liquidated, i.e., represents matters susceptible of being shown with mathematical certainty by the production of books, papers or vouchers. In such case it is the duty of the committee to compare the claim with such evidence of its correctness in amount and to pay only so much as appears thus to be correct.

This process can hardly be applied to an unliquidated claim, such as a claim for service not based upon a per diem or other time basis, or for injury to person, etc.; but it can be applied to nearly all the claims in the bill, even in instances in which they represent "damage claims" in the general sense.

All claims, however, whether liquidated or unliquidated, or whether capable of being liquidated or not, must be looked into to determine their validity from the stand-point of justice. As above stated, the delegation of this duty and power to the committee is not equivalent to vesting the committee with legislative discretion.

It is necessary here to discriminate between two possible implications of the term "validity in point of justice" as used in the section. One possible implication would be that the committee is to examine into the original merits of each transaction constituting the whole or part of such claim presented to it, and if satisfied that the transaction did not give rise to a legal or moral obligation against the state to withhold payment in whole or in part on that account. The other possible implication is that the committee is not to examine into the merits of the original transaction or transactions further than to identify such transactions with the items of the appropriation bill of which the section is a part and to be satisfied that the claim presented for payment represents a transaction within the scope of the legislative purpose in making

the appropriation. For example, the first item in the bill is an appropriation to pay the claim of the

"Cranford Construction Company, Cincinnati, Ohio, * *
for rental of orange peel bucket and swinging engine."

I, of course, have no knowledge as to the transaction giving rise to this claim. Let it be assumed for the purpose of illustration that some agent of the state without actual authority, rented from the company the equipment referred to in the item and used it in what was supposed to be the state's business. The auditing committee in the first view of the phrase now under examination would be authorized to reject the entire claim and withhold payment of the whole amount appropriated, if it should come to the conclusion that the circumstances imposed no moral or legal obligation on the state. In the second possible view of the meaning of the section, however, the committee would not possess such authority but would be limited to inquiry into whether or not the transaction described in the item actually took place and whether or not the claim presented to the committee for payment is based on that transaction.

Again, to take a quite different type of case, there are numerous appropriations for

"In full settlement for all claims for salary and traveling expenses in the State Oil Inspector's department owing to a deficit in the appropriations made by the 81st General Assembly, resulting from a change in the Oil Inspection law."

Each one of these claims is, of course, to be examined and audited by the committee to determine its correctness in point of amount; but in addition to such examination the committee is authorized and required to satisfy itself that the travel constituting the transaction on which any claim for traveling expenses would be based was actually had and that it was in connection with the business of the state oil inspector's department. This would be true whichever of the two views above suggested were taken.

Coming now to the choice between these views, it seems clear to me that the second or the narrower of them must be accepted, to the exclusion of the first. By making appropriations in settlement of claims, on the one hand, or by way providing for future expenditures, on the other hand, the assembly has itself determined the essential merits of the claims which it has described in its appropriations. It has also placed the seal of its approval upon the amount to be paid in satisfaction of such claims provided they are

found to be correct. But the general assembly lacks adequate machinery for the actual disbursement of money. It is quite appropriate and entirely within the power of the assembly to provide means for checking up and verifying the claims presented for payment, so as that the payments to be made may exactly carry out the intention which lies behind each appropriation. It is as if in each case the general assembly had said: "We desire that A. B. shall be paid the sum of ——— dollars in full settlement of a claim which he asserts for doing certain work and incurring certain expenses. We do so because the doing of such work and the incurring of such expenses constitute in the judgment of the assembly, a claim which the state ought to recognize and pay. We therefore direct the committee, as a temporary and special administrative agency, to disburse the appropriation which we have made to A. B. in satisfaction of that claim; but we wish it to be understood that A. B. is to have the money only in respect of that claim and in respect of no other. Therefore the committee must require A. B. to present his claim and identify it with the transaction which we have approved and the amount which we have allowed. In so doing the committee is to audit the claim of A. B. as a final check upon its mathematical correctness and as a means of assurance that it is the claim which we have pronounced to be a just claim by the approval of it which we make in the succeeding section of this bill."

This interpretation seems to me to be the only possible one consistent with all the provisions of the bill. The appropriations which are made are not self-executing but are conditional upon the approval of the committee exercising such authority as has been defined, but not exercising the discretion which the legislature very clearly has exercised with respect to the approval of the merits of the claim. By this interpretation effect is given not only to the language immediately under examination, but to numerous other provisions of the bill found in Section 3 thereof as well. The adoption of the broader meaning suggested would give rise to an inconsistency between Section 2 and the many provisions of Section 3, which is to be avoided on familiar principles of statutory interpretation.

It occurs to me also that to construe Section 2 of the bill so as to vest in the committee final discretion as to the merits of any claim, or part of claim, from the standpoint of abstract justice would imperil the validity of the act as a whole; for it must be remembered that so far as claims arising out of transactions not

covered by pre-existing laws are concerned, the general assembly was in the passage of the act exercising the authority provided for in Article II, Section 29 of the Constitution, which provides as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly."

It is, of course, assumed that the bill in question received the proper vote in each branch of the general assembly. It would be valid as an appropriation bill with respect to the items not constituting claims for extra compensation after the service has been rendered or claims the subject matter of which has not been provided for by pre-existing law, but as to such claims the bill would be invalid had it not received the proper vote.

The section of the Constitution which has been quoted provides very clearly that the general assembly must itself allow the compensation of claim of the class to which the section relates before it can be paid. The general assembly will be presumed to have intended to discharge this duty in the enactment of this bill. This duty is believed to be non-delegable not only on the general principle that legislative power can not be delegated which is very familiar, but also because of the express provisions of Section 29 of Article II. Therefore, the general assembly is without power to delegate to any committee or administrative tribunal the authority to allow a claim of this character.

As the bill has been interpreted no such unconstitutional delegation of authority can be found in it. But if it were very broadly interpreted—in other words, if the committee could be regarded as not bound by the action of the general assembly so far as the substantial merits of each claim are concerned, the validity of the bill as a whole would become involved in considerable doubt. This fact is mentioned for the purpose of demonstrating that even if the interpretation of Section 2 already made in this opinion be regarded as doubtful, the well settled principle that an act referable to a specific constitutional authority is to be construed consistently with the specific authority that is exercised comes into play and requires the interpretation which has been given.

In passing I may say also that the validity of the bill in so

far as any question respecting delegation of judicial power is concerned, is in my opinion beyond question. The function which the committee is to discharge as above described partakes in no respect of the character of judicial power. The essential attribute of judicial power is that when exercised it has a final and determining effect upon the rights to which it is applied. In this case each claimant prior to the passage of this bill had a right against the state which was an imperfect obligation because of the immunity of the state to suit, and the further inability to obtain satisfaction against the state as a sovereign. This claim is nowise affected by any action which the committee may take, nor indeed could it have been affected by action of the legislature. True, the legislature by allowing the claim thereby gave it certain remedial potentialities which it formerly did not possess. In the first place, if the assembly had allowed the claim but had not made any appropriation a subsequent appropriation might be made by a simple majority of the assembly as the effect of the first action would have been to satisfy the requirements of Article II, Section 29 of the Constitution. In the second place, the appropriation entitles the claimant to receive the money through the channels provided for its payment by the act of appropriation. The function of the committee comes in here merely as a conduit through which the money must pass from the state treasury to the claimant and as a safeguard against the violation of the substantial legislative intent in making the allowance itself. That is to say, the legislature virtually enacted that each claim—describing in most instances the transaction in the mind of the legislature—is allowed and a certain sum appropriated to pay it, which sum is to be the amount with respect to which the allowance is made, except that the assembly does not intend to allow any thing except the claim described to the individual or corporation mentioned as the claimant, nor is the amount appropriated to be paid to him or it at all events but only to the extent which the process of auditing may disclose to be “correct” and “just” as these terms are above defined.

The legislature, having itself created the new remedial potentialities of the claim may in the act of creation qualify these matters and appoint a temporary administrative tribunal to discharge the necessary function involved without in anywise affecting the original claim itself, and without precluding either the state or the claimant from any juridical remedies which either

might otherwise have, notwithstanding the action of the committee.

For the above reasons, then, it is the opinion of this department that Section 2 of House Bill No. 558 is a valid enactment; (that) the bill as a whole is valid; and (that) the powers of the special auditing committee provided for in said Section 2 are as follows:

(1) To require as a condition of payment, and if deemed necessary by the committee, the production of such books papers, statements and other evidence as will exhibit to the committee the amount claimed by each claimant, the nature of the transaction giving rise to the claim, and such itemization thereof as is possible in the nature of the case and which will tend to enable the committee to correct the items and the totals where they are capable of correction; and to pay on the basis of such corrections but not in excess, of course, of the amount appropriated.

(2) On the basis of such investigation to identify the claims presented to the committee in all legal respects with the claim approved by the legislature, not only in amount but also in substance, as to each detail of each transaction which is capable of separate consideration; and to pay only on the basis of such separable transaction as represent the transactions which the legislature has approved and thus stamped as valid and just.

SUPREME COURT

The Village of Northfield et al., v. The Public Utilities Commission.

Public Utilities Commission—Jurisdiction—Interurban Railroads—Abandonment of Line—Rights and Duties of Company—Discontinuance of Service—Application to Abandon not Defeated, When—What Constitutes Voluntary Abandonment—Sections 504-2 and 504-3, General Code (107 O. L., 525).

1. The act of March 21, 1917 (107 O. L., 525), authorizes abandonment of a part of an interurban line where the Public Utilities Commission is satisfied that such would be reasonable, having due regard to the welfare of the public and the cost of operating the service or facility.
2. The fact that a railroad has discontinued service over a part of its main track for a short period immediately prior to its application to abandon will not deprive it of that right, provided such track has been operated for five years previous to such application.
3. Because of the continued use of service and the subjection of such service to the authority of the Public Utilities Commission under the facts disclosed in this case, there was no voluntary abandonment of the old route in controversy.

(No. 16384—Decided December 9, 1919.)

Error to The Public Utilities Commission.

Prior to July 6, 1913, The Northern Ohio Traction & Light Company operated, as a part of its general system, an interurban railroad between Cleveland and certain points in Summit county, Ohio. This line of road for a number of years had passed through stations known as Chittenden Corners, Northfield and Fells Switch, all located in Summit county, the village of Northfield lying substantially midway between Chittenden and Fells, the distance between these two stations approximating seven miles. The interurban road then operating between Chittenden and Fells occupied the public highway. With a view to relocation of that portion of its line between Chittenden and Fells, the traction company in 1913 constructed its line along a new route between those stations leaving the public highway which it theretofore had occupied and now seeks to abandon. Between the two stations named the new line was at no point a greater distance than 4150 feet from that of the old route.

After July 6, 1913, the traction company operated the new

route with both limited and local service thereon, but operated local cars only over the old right of way between Chittenden and Fells until September 21, 1918, when it discontinued operation of all cars on its old line between Chittenden and Fells; whereupon the complainant filed its complaint with the Public Utilities Commission against the traction company, alleging the discontinuance of service over the old line, and asking that the traction and light company be required to reinstate and continue the operation of its railroad over the old route between Chittenden and Fells.

The defendant company filed its answer alleging that by proper action taken by its officers and directors it had relocated its line of railway between the points mentioned; that because of following the curves and grades of the highway its operation over the old route was extremely dangerous and caused great annoyance to public travel; that it had obtained the authority of the Public Utilities Commission to finance the construction of its new line between Chittenden and Fells; and that in pursuance of that authority such relocation was made over a private right of way acquired by it.

The defendant in its answer also filed a cross-complaint stating that if the Commission should be of the opinion that the old had not been abandoned, or could not be lawfully abandoned without its order, in such event the company applied for an order authorizing it to abandon its tracks on the old route.

After a full hearing the Public Utilities Commission authorized the defendant company to abandon its old line of track and service of facilities thereon between Chittenden and Fells, and refused to order a restriction of the services discontinued by the company on September 21, 1918.

Thereupon the village of Northfield filed its petition in error in this court asking that the order of the Public Utilities Commission be reversed or vacated.

Messrs. Boyd, Cannon, Brooks & Wickham and Mr. John B. Chapman, for plaintiff in error.

Messrs. Mather & Nesbitt, for The Northern Ohio Traction & Light Company, defendant in error.

Jones, J. The traction company challenged the jurisdiction of the Commission for the reason that it had relocated that portion of its main line between Chittenden and Fells, and abandoned its old route, prior to the passage of the act of March 21, 1917, and therefore the commission had no jurisdiction to entertain the application of plaintiff in error.

This claim is not supported by the record. After the relocation of the line in 1913, while the traction company did abandon certain of its facilities, including the use of limited cars over the old route between the stations named, it still continued the operation of local service over the old route between Chittenden and Fells. This service was continued until September 21, 1918, when it attempted to discontinue service entirely. The record therefore discloses that all that was abandoned was the utilization only of part of its service and facilities on the old line. Furthermore the traction company subjected itself to the jurisdiction of the commission in 1914, in a proceeding before the commission, wherein this village had complained of the service and facilities established and maintained over the old line. In that proceeding the commission, in accord with an amicable agreement entered into between the parties, ordered the further installation of local service over the old route. Local service was thereafter maintained until long after the passage of the act of March 21, 1917, (107 O. L., 525), which enlarged the powers of the commission with reference to the abandonment of service and facilities by interurban and other railroads. Section 2 of that act (Section 504-3, General Code) is as follows:

"Any such company desiring to abandon or close for traffic any part of its line, main track or tracks or depot, shall first make application to the public utilities commission in writing, who shall thereupon cause reasonable notice thereof to be given, stating the time and place fixed by the commission for the hearing of said application. Upon the hearing of said application said commission shall ascertain the facts and make its findings thereon, and if such facts satisfy the commission that the proposed abandonment or closing of traffic is reasonable, having due regard to the welfare of the public and the cost of operating the service or facility, they may allow the same; otherwise it shall be denied, or if the facts warrant, the application may be granted in a modified form. Provided, however, that should the application ask for the abandonment of any main track in such manner as to result in the permanent abandonment of service between any two points, no application shall be granted unless the company shall have operated said track for a period of at least five years," etc.

Acting under the authority of that law the traction company filed its cross-complaint, asking that it be permitted to abandon service on the old route between Chittenden and Fells.

The Section of the law quoted declares that if upon full hearing the facts satisfy the commission that the proposed abandonment is reasonable, having due regard to the welfare of the public, and the cost of operation, the commission may allow such abandonment. Upon these features there was a full hearing before the commission. The commission found that at no point was the new line more than 4150 feet from the old route; that about 700 people of all ages lived within a zone of one and one-half miles on either side of the old route along its entire length; that the receipts from the operation of cars at certain periods of the year were hardly enough to pay for the power alone; and that the operation of the cars between the stations named not only was unprofitable but was maintained at a considerable loss. It was explicitly found by the commission, that, while there might be inconvenience to the patrons who availed themselves of the service rendered by the company over the old line of track, it was a greater economic waste to compel the company to operate the old line of railway at a loss when the patrons thereof could be "served by the defendant company's cars operating over the re-located or new track having stops at all of the public roads crossed by the old line of track, six in number, together with four additional stops intermediate between said points or stations of Chittenden and Fells." The finding of the commission discloses that it considered all the circumstances and conditions existing relative to the necessity of the service and tracks sought to be abandoned, including the facilities for serving the public of that vicinity over the new route.

Upon review of this record we do not think the commission erred in authorizing the abandonment of the old line of track and service between Chittenden and Fells.

Because the traction company discontinued its entire service from September 21, 1918, until this complaint was filed in the month of October following, the plaintiff in error contends that the statute is available only to those companies "desiring to abandon" and that the act is not available to a company, which, as in this case, had already abandoned its line for a short period previous to its application to do so.

This construction of the statute is too narrow. The statute does not in terms require that the track shall be operated for a period of five years or more immediately prior to the application for abandonment. The act is broad and comprehensive. It provides that the application shall not be granted unless the com-

pany "shall have operated said track for a period of five years." This part of the track had been in operation in some form for a period of twenty-four years, and for more than five years after relocation of its new line in 1913.

The legislative purpose in fixing the period at five years' time was, no doubt, to establish a fixed period in order to test the requirements of the statute, and in the light of the surrounding conditions and circumstances affecting operation to enable the commission to ascertain facts satisfying it that the proposed abandonment and closing of the road for traffic was reasonable, having in view the public welfare and operative cost.

The order of the commission is affirmed.

Order affirmed.

Nichols, C. J., Matthias, Johnson, Wanamaker and Robinson, JJ., concur.

Merrell, J., not participating.

SECRETARY OF STATE

NEW CORPORATIONS

The Stillman-Redick Co., Cleveland, \$500.00. H. F. Stillman, H. F. Redick, F. S. Tylor, J. M. Shiely, E. Brown.

The Grantwood Realty Co., Cleveland, \$10,000. E. E. Wolf, H. G. Sloss, I. Shenker, H. K. Spero, H. A. Shibley.

The Silverthorne Land Co., Cleveland, \$25,000. T. M. Dye, D. V. Fisher, P. M. Berry, W. H. Findley, M. I. Buelow.

The Hannan-Linn Co., Steubenville, \$30,000. J. E. Hannan, S. S. Linn, F. M. Work, J. Longo, J. A. Huston.

The Fisher Underselling Store Co., Salem, \$25,000. W. Fisher, B. Fisher, W. W. Arnold, M. Dickler, M. Linett.

The Rock Products Co., Toledo, \$10,000. W. G. Stevenson, J. Warfield, A. G. Minehart, J. D. Rhoades, E. A. Schramm.

The Twin City Farmers' Exchange Co., Buckeye City, \$30,000. S. C. Shutts, E. M. Wander, C. M. Wander, W. B. Farmer, J. Colopy, H. E. Whitney.

The Lake Erie Hotel Co., Ashtabula, \$1,000,000. D. Olmstead, R. B. Bunstine, W. H. Byron, M. W. Hawkins, F. E. Blackburn.

The Weil's Casing Co., Cleveland, \$50,000. D. B. Weil, R. Bell, A. Gerson, S. H. Katz, L. A. Katz.

The Player-Music Co., Cleveland, \$10,000. S. Grossman, F. S. Day, E. Ackerman, J. J. McCormick, H. F. Glick.

The Ralph B. Smith Co., Toledo, \$25,000. R. B. Smith, D. E. Derby, R. H. Peters, K. E. Richterm, F. J. Kessel.

The Snyder & Lane Motor Co., Piqua, \$25,000. G. Snyder, H. L. Lane, W. A. Snyder, K. Snyder, S. H. Lane.

The J. & K. Metal Products Co., Cleveland, \$10,000. A. B. Jippon, H. A. Kangesser, A. M. Greening, E. S. Krusch, E. E. Gross.

The Mutual Realty Service Co., Columbus, \$10,000. C. T. Warner, F. C. Perkins, J. B. Witherspoon, L. C. Halterman, O. E. Halterman.

The Manufacturers Foundry Co.,

Cleveland, \$500,000. Wm Wynn, A. Kyle, Geo. J. Dowling, B. J. Russell, E. F. Marcha.

The Laughrey-Hatton Brick Co., Hatton, \$55,000. R. M. Ferguson, H. A. Seward, J. D. Rhoades, L. G. Kreke, B. Scott.

The Progressive Dye and Tool Co., Columbus, \$200,000. H. F. Gray, H. Voltz, O. Snashall, E. E. Brennan, J. P. Michael.

The Brookside Country Club Co., Canton, \$400,000. W. T. Kuhns, E. Heffelman, C. R. Jamison, W. H. Crawford, C. C. Herbruck.

The Wirthmor Construction Co., Cleveland, \$10,000. I. N. Loeser, F. G. Mooney, M. A. Loser, M. E. Kelly, M. M. Roche.

The Alexandria Farmers Co-operative Co., Alexandria, \$50,000. A. O. Metcalf, E. R. Thomas, D. D. Clark, E. J. Henthorn, A. O. Brooks.

The Katzenmeyer Co., Cleveland, \$10,000. A. M. Papurt, R. A. Katzenmeyer, A. L. Katzenmeyer, D. H. Verovitz, A. H. Verovitz.

The American Plasto-Marble Co., Zanesville, \$20,000. W. L. France, M. France, P. W. Steil, Catherine Steil, S. B. Danner.

The Esfle Mfg. & Supply Co., Toledo, \$10,000. H. Spoke, R. S. Walker, H. Schaefer, T. S. Aubry, G. G. Schaefer, B. C. Heck.

The Wayne Realty and Investment Co., Akron, \$25,000. W. S. Chaffin, H. H. Gault, D. M. Chaffin, H. L. Gault, H. M. Snyder.

The Three Points Realty Co., Akron, \$100,000. F. Seiberling, J. B. Huber, E. Hamlen, R. Bramman, H. Guinther.

The Liberty Home Building Co., Cleveland, \$5,000. H. A. Kangessor, A. M. Greening, M. S. Robinson, A. H. Bramson, E. S. Krusch.

The Superior Realty & Investment Co., Cleveland, \$10,000. M. R. Burnage, A. W. Thomas, M. A. Sellberg, R. L. Davis, C. C. Townes.

The Comstock Co., Cleveland, \$50,000. Boyd Comstock, M. Markt, J. W. Monroe, M. J. Tucker, M. R. Burnage.

The Dayton Top Co., Dayton, \$50,000. H. C. Smith, M. L. Smith, A. C. Reiger, A. E. Greer, A. F. Greer.

The Ashtabula Co-operative Mercantile Co., Ashtabula, \$10,000. W. Headly, R. W. Benham, C. D. Phelps, H. H. Holmes, B. W. Balls.

The New Washington Equity Exchange Co., New Washington, \$50,000. Geo. Foster, R. H. High, Clark Ackerman, P. Heydinger, G. M. Marquardt.

The Sugar Creek Farmers Equity Co., Sugar Creek, \$50,000. J. S. Miller, A. B. Mast, S. H. Miller, M. A. Miller, Geo. J. Rausch.

The St. John-Etling Realty & Lumber Co., Barberton, \$250,000. Geo. W. St. John, B. O. Etling, C. L. Bushy, C. A. Bitzer, R. E. Morton.

The Bluebird Home Co., Cleveland, \$100,000. H. F. Madden, W. R. Flaherty, A. C. Knight, L. A. Cassidy, John J. Sullivan.

The W. C. Cooper Co., Cleveland, \$50,000. M. Garber, A. Goldman, G. W. Poppleton, C. D. Reich, E. Kopp.

The Baker Coal and Supply Co., Barberton, \$50,000. J. C. Baker, Jonas Baker, C. P. Grigsby, I. B. Amstutz, C. J. Diehl.

The Cleveland Turned Parts Co., Cleveland, \$1,000,000. A. W. Gillespie, R. L. Novak, J. F. Alexander, W. Petrie, Robert Johnstone.

The Hardening Process Aluminum & Copper Co., Cleveland, \$25,000. H. M. Buluckian, Cap. Bagdasarian, C. Carroll, W. E. Loesch, Cyrus Locher.

The Farmers Electric Power and Light Co., Birmingham, \$25,000. W. H. Wasem, A. J. Portman, J. J. Sadrach, C. E. Miller, Chas. Grenzenbach.

The Middleport Co-operative Co., Middleport, \$40,000. J. A. Beverage, H. E. Gaskill, R. C. Sansbury, F. H. Castoe, G. M. Gilmore.

The Buckeye State Mortgage Co., Columbus, \$100,000. L. W. Josephson, C. L. MacEachen, O. Marquardt, W. R. Burkley, R. Richman, I. Block, J. Mattlin.

The Colonial Music Co., Toledo, \$52,500. W. S. Mefford, J. W. Eslinger, J. H. Johnson, S. Z. Kaplan, A. C. Ruhlley.

The Fourth Street Realty Co., Cleveland, \$50,000. A. V. Cannon, J. P. Taggart, L. A. O'Neill, D. J. Miller, H. M. Dyer.

The Homberger & Wagar Engineering & Construction Co., Sandusky,

\$150,000. H. W. Homberger, R. L. Wakar, E. C. Krueger, I. E. Smith, C. B. Homberger.

The 128th-St., Clair Street Co., Cleveland, \$100,000. M. A. Copeland, C. A. Quintrell, G. A. Mowery, F. L. Fvarts, M. E. Getchell.

The Carey Realty Co., Carey, \$5,000. C. A. Shire, E. B. Kurtz, G. C. Snyder, W. J. Newhard, C. X. Diller.

The Cummerow Grocery Co., Toledo, \$10,000. W. E. Spafford, Harold Spafford, J. H. Wilson, F. A. Cummerow, R. Spafford.

The Ohio Athletic Club Co., Cleveland, \$1,000. P. W. Flicker, J. G. Bingham, Ole Hipner, F. W. Yennis, W. S. Searles.

The King Oil & Gas Co., Youngstown, \$150,000. H. A. Hillman, Harry Hilderbrant, A. Althof, C. W. Mead, C. C. Barker.

The Heister-Curtiss Co., Cleveland, \$25,000. A. J. Schanfarber, B. D. Gordon, A. M. Neill, F. A. Mertz, J. A. Epstein.

The Heister-Curtiss Properties Co., Cleveland, \$250,000. A. J. Schanfarber, B. D. Gordon, A. M. Neill, F. A. Mertz, J. A. Epstein.

The Southern Rollaway Sales Co., Toledo, \$10,000. E. D. Gauntlett, I. J. Flory, F. Smith, J. McCabe, M. C. Boesel.

The Ohio Southern Oil & Gas Co., Hamilton, \$200,000. W. F. Madden, J. A. Corst, M. L. Hart, A. S. Fenzel, C. Fenzel.

The Zanesville Housing Co., Zanesville, \$500,000. R. C. Burton, C. D. Fraunfelder, H. E. Buker, W. J. Atwell, E. E. Lorimer, W. A. Lorimer.

The Shakespeare Amusement Co., Cincinnati, \$15,000. E. L. Shakespeare, L. J. Hopp, W. C. Willging, J. L. Kohl, S. Assur.

The Foster Medicine Co., Cleveland, \$5,000. B. A. Foster, J. B. Washington, F. L. Handy, N. A. Askew, C. M. Dabney.

The Clemens Oskamp Co., Cincinnati, \$50,000. J. C. Waller Jr., Geo. Kolb, W. H. Whitehouse, G. Lockbourne, M. Rieker.

The Fuhr-Reinhart Motors Co., Canton, \$15,000. J. L. Reinhart, F. L. Fuhr, W. J. Reinhart, J. R. Payser, W. D. Reinhart.

The Merriman Road Co., Akron, \$100,000. J. S. Maloney, F. G. Alexander, W. H. Collins, R. T. Curtis, C. W. Alexander.

The Worth Knowing Products Co., Barberton, \$15,000. O. Lazich, N. Psaltakis, M. M. Sumonic, J. Psaltakis, R. E. Morton.

The Sykes & Thompson Co., Cleveland, \$60,000. T. H. Jones, W. T. Kinder, K. Tolles, C. F. Reavis Jr., H. A. Marting.

The Cleveland Abrasive Wheel Co., Cleveland, \$75,000. R. Sanborn, C. T. McConnell, Chas. T. Rich, Geo. T. McConnell, M. Kulik.

The Sandusky Farm Implement & Supply Co., Sandusky, \$25,000. J. Window, Lewis Neill, E. J. Martin, F. E. Hartmann, C. Neill.

The Independent Awning & Tent Co., Dayton, \$10,000. G. B. Utzinger, L. W. Utzinger, W. W. Huesman, G. A. Utzinger, C. W. Lenz.

The Argus Oil Co., Cleveland, \$300,000. R. M. Ewing, D. L. Lind, M. W. Vickery, E. L. Heasley, M. E. Nichols.

The Allen Furniture Manufacturing Co., Spencerville, \$100,000. J. B. Patterson, M. O. Smith, O. K. Wheelock, H. E. Garling, G. L. Art-ers.

The Clifton Community Co., Cincinnati, \$10,000. G. M. Berger, A. J. Thomas, Fred W. Miller, F. Guck-emberger, W. Bahmann.

The Shelby Milling Co., Shelby, \$200,000. H. G. Hildebrant, H. L. Brandt, G. W. Marriott, C. C. Bloom-field, R. V. Snyder.

The Cincinnati Fixture Foundry Co., Cincinnati, \$30,000. H. L. Freuch-temeyer, W. G. Brown, E. G. Streit, H. D. Thomas, L. R. Thomas, G. A. Breenner.

The Junior Home Co., Canton, \$25,000. R. A. Riegle, D. W. Harry, U. E. Clay, G. J. Naftizger, C. G. Her-bruck.

The Thomas Theatre Co., Akron, \$105,000. A. T. Barnes, D. C. Mur-phy, E. M. Wachner, J. Gadel, C. E. Remie.

The A. B. Flory Co., Canton, \$500,000. A. B. Flory, Wendell Herbruck, H. Nelius, G. B. Kellogg, F. B. Mel-choir.

The Jeavons Co., Cleveland, \$315,000. J. L. Huston, A. M. Snyder, N. I. Young, R. E. Roehm, G. M. Roudebush.

The Builtwell Homes Co., Sandus-ky, \$21,000. H. W. Gosser, E. J. Rosino, J. E. Herman, E. C. Krueger, S. Hottenroth.

The Canton Pattern and Manufac-turing Co., Canton, \$100,00. T. M. Dubs, E. R. Starkey, L. A. Ream, R. Efinger, T. J. Hahn.

The Barshal Engineering Co., Cleveland, \$50,000. S. B. Fitzzim-mons, E. E. McCloud, H. C. Berhous, A. F. Louder, E. E. Parsons.

The McDonald Gas & Oil Drilling Co., McDonald, \$35,000. T. D. Mc-Donald, Wm. McDonald, S. J. Mc-Donald, H. Knipple, E. C. McDonald.

The Reliance Securities Co., Cleve-land, \$10,000. M. A. Copeland, C. A. Quintrell, N. B. Madden, M. E. Get-chell, O. E. Schultz.

The Criterion Clothing Co., Ports-mouth, \$75,000. J. H. Varner, W. H. Burt, J. L. Kountz, Pearl M. New-land, W. Trigg.

The Columbia Candy Co., Cleve-land, \$25,000. G. Kesler, F. J. Svo-boda, J. F. Krezek, T. Nonemaker, J. C. Svoboda, P. M. Kocak.

The Kimball Leather Goods Co., Conneaut, \$50,000. E. Kimball, M. A. Kimball, F. Kimball, C. L. Whitney, Ida Whitney.

The Komar Realty Co., Cleveland, \$10,000. H. Wolf, M. P. Goodman, M. M. Cohen, O. Markowitz, Daniel Wolf.

The Ro Publishing Co., Marietta, \$10,000. E. P. Foster, A. G. Schmidt, W. S. Ross, W. H. H. Jett, B. B. Putman.

The Bruhn Co., Cleveland, \$10,000. O. S. J. Bruhn, M. W. S. Bruhn, A. C. Bruhn, C. C. F. Bruhn, K. W. M. Bruhn, L. P. Bruhn.

The Euclid-Eighty-Sixth Co., Cleve-land, \$100,000. C. A. Alexander, J. H. Schultz, Q. H. Findley, T. M. Dye, M. I. Beulow.

The Albra Castings Co., Cleveland, \$10,000. R. L. Welsh, S. F. Dolezal, J. Kulas, G. U. Fouts, E. F. Fanchal-ly, Stephen Szaraz, Joseph Synk.

The Cleveland Cylinder Regrinding Co., Cleveland, \$20,000. C. H. Sand-berg, A. M. Sandberg, C. N. Krieg, N. B. Monda, E. Monda.

The Delta Machine and tool Co., Cleveland, \$10,000. S. E. Boim, Jos. Engel, E. Schwartz, M. A. Klein, W. H. Dettelbach.

The First Securities Co., Cleveland, \$10,000. Frank H. Ginn, T. H. Jones, R. C. Hyatt, G. Abbott, Grover Hig-gins.

The Storey Printing Co., Cleveland, \$25,000. E. Kropp, A. Goldman, G. W. Poppleton, M. Garber, C. D. Reid.

The Allsteel Supply Co., Niles, \$250,000. J. E. Fitzgerald, A. E. Quere, M. N. Fitzgerald, J. C. Argetsinger, C. A. Manchester.

The Case Automobile Rebuilding Co., Columbus, \$102,500. A. A. Case, E. S. Shank, T. M. D. Hills, T. E. French, C. E. Steeb.

The Uniform Realty & Investment Co., Akron, \$10,000. W. M. Merryweather, L. V. Bowers, F. Poulter, C. Ellet, G. B. Reinke.

The Akron-Newton Furnace & Machine Co., Akron, \$200,000. J. H. Heller, L. E. Van Bushirk, F. L. Culver, B. W. Green, R. W. McCallum.

The Lima Office Supply Co., Lima, \$10,000. M. L. Bliss, M. N. Shrevesm, L. N. Marion, I. F. Judkins, B. L. Shreves.

The Lake County Community Market Co., Perry, \$25,000. H. J. Wright, G. M. Salkeld, T. B. Westm, C. L. Lucas, B. B. Bitzer.

The Toledo Double Wall Construction Co., Toledo, \$25,000. G. C. Corbin, A. A. Thacher, O. C. Thacher, M. B. Kohler, G. B. Thacher.

The Holdfast Manufacturing Co., Ashland, \$100,000. J. E. Fredo, P. Long, L. F. Ott, W. A. Swinehart, H. C. Mansfield.

The Unnamed Co., Cleveland, \$5,000. C. W. Pattison, E. Brown, J. M. Shiely, J. P. Comyns, Louis Ulmer.

The Goliath Manufacturing Co., Cleveland, \$10,000. J. J. Sexton, J. P. Kalina, F. E. Wirthshafter, J. N. Ackerman, T. E. Greene.

The Liberty Baking Co., Cleveland, \$10,000. O. S. Cramer, M. L. Millert, E. M. Stevenson, J. P. Kalina, F. Harris.

The Roehl Brothers Paving & Construction Co., Cleveland, \$50,000. C. C. Roehl, J. Roehl, C. W. Hagesfeld, C. Heidcloff, A. E. Bringman.

The Hales-Walsh Co., Cincinnati, \$25,000. J. R. Hales, S. P. Walsh, E. F. Peters, S. Geismar, R. L. Hinds.

The Akron Professional Building Co., Akron, \$10,000. F. E. Ganyard, J. T. Miller, G. T. Smith, J. D. Thomas, Wm. D. Hood.

The Security Metal Products Co., Cincinnati, \$100,000. W. P. Anderson, V. L. Moeser, G. W. Mallon, S. C. Donohue, H. M. Howard.

The Industrial Casting Co., Hamilton, \$50,000. D. S. Beaton, A. McGinnis, J. C. Lease, A. B. Kleinfelter.

The Cleveland Electrical Supply Co., Cleveland, \$200,000. Harry Guttentag, S. Goldman, G. A. Streett, H. L. Hyman, E. J. Weiss.

The Twine Lake Co., Kent, \$200,000. J. W. Salter, D. S. Grau, H. B. Renouf, O. Wilcox, R. H. Smith.

The Ukrainian Progressive Educational Club Co., Cleveland, \$75,000. A. Goldman, G. W. Poppleton, M. Garber, E. Kopp, N. Lombardo.

The Summit Mortgage & Investment Co., Akron, \$205,000. H. S. Salton, S. Friedman, A. Henderson, H. Bannon, D. W. Maxon.

The Concrete Art Tile Co., Cleveland, \$105,000. M. E. Meisel, P. Waldman, F. C. Raymond, J. Merrick, E. M. Martin.

The Security Home Building Co., Cleveland, \$310,000. M. N. Fowler, J. H. Schudtz, M. I. Buelow, D. V. Fisher, O. M. Donough.

The American Monument Co., Cleveland, \$110,000. E. E. Rich, P. L. Graham, M. A. Sellberg, A. W. Thomas, Fred F. Klingman.

The Modern Land Co., Cleveland, \$60,000. C. F. Gross, P. M. Astor, H. H. Elder, Henry Spilka, R. Gerge-ly.

The Parker Valve Co., Cincinnati, \$25,000. E. A. Williams, J. F. Parker, R. C. James, C. S. Williams, R. Collins.

The Superior Real-Estate & Investment Co., Akron, \$10,000. G. H. White, H. A. Sullivan, J. D. Hotchkiss, M. B. Keller, R. Pelton.

The Pyle Abstract Co., Painsville, \$3,000. F. T. Pyle, E. F. Blakell, R. F. Pyle, B. D. White, F. A. Searl.

The Fulton Manufacturing Co., Cleveland, \$50,000. S. H. Holding, T. H. Duncan, K. Wing, J. A. Schlitz, T. C. Robinson.

The Willard-Middletown Machine Co., Middleton, \$1,000. J. G. Hey, A. C. Dodge, W. L. Schellenbach, A. T. Winkelmann, F. Mendenhall.

The Bucyrus Malleable Castings Co., Bucyrus, \$200,000. P. Brownarsky, S. A. Schieber, H. A. Wyss. A. Wheeler, D. Kalb, R. V. Sears.

The Farmers & Merchants Bank, Malinta, \$25,000. G. Bremer, J. Frany, L. T. Knipp, E. W. Shuler, J. A. Smith.

The Hydro-Carbon Gas Products Co., Cleveland, \$500,000. W. W. Stephens, M. M. Black, H. J. Sommers, A. A. Stephens, Florence Zinner.

The Ohio Valley Light Co., Columbus, \$25,000. R. O. Burrer, P. P. Burrer, K. O. Burrer, G. J. Burrer Jr., D. M. Cupp.

The Wood Mosaic Co., Cincinnati, \$100,000. Ed. R. Dunlap, L. D. Potter, C. B. Terry?, R. A. Le Blond, E. S. Morrissey.

The Geer-Jung Co., Cincinnati, \$25,000. C. E. Geer, Nathan Jung, E. S. Morrissey, R. A. Le Blond, L. D. Patter.

The Clark-Fisher Co., Cleveland, \$10,000. M. E. Evans, J. A. Nieding, J. H. Frank, G. N. Clark, E. Z. Driggs.

The Morlon Process Co., Cleveland, \$100,000. F. L. Loveless, H. A. Cummings, G. C. Lewin, M. F. Spigelski, M. Lonyay.

The Silver Steel & Iron Co., Greenville, \$300,000. M. J. Wise, W. B. Liggett, G. Hills, W. R. Munger, B. F. Wyatt.

The Butter Flake Co., Cleveland, \$210,000. F. W. Poulson, J. Nuccio, W. D. Root, J. F. Connors Jr., J. Steim.

The Lorain Security Co., Lorain, \$55,000. C. W. Brainard, S. J. Wirtz, B. V. Kennedy, M. L. Peterson, D. A. Cook.

The G. A. Powers Grain Co., Genoa, \$20,000. C. A. Powers, N. J. Wood, J. C. Bowman, G. F. Bowman, H. P. Bowman.

The super-Heating Boiler & Furnace Co., Columbus, \$100,000. L. H. Southard, W. R. Sayers, W. C. Southard, E. N. Huggins, J. L. Davies.

The Council Building Co., Cleveland, \$50,000. L. Feldman, M. H. Lipman, Dave Perlick, Sam Wahl, J. B. Cohn.

The Prima Electric Shop Co., Toledo, \$10,000. E. F. Chittenden, C. H. Steele, H. G. Wall, A. C. Ruibley, H. W. Fraser.

The Farmers Electric Light Co., Bronson Twp., \$1,500. Fred Schamp, J. M. Roth, F. M. Luth, F. M. Chapin, F. A. Lieber.

The Lebanon Farmers Co-operative Co., Lebanon, \$75,000. J. M. Bone, E. J. Beedle, A. B. Jennings, H. W. Hatfield, T. H. Banta, M. C. Drake, A. V. Snook, J. L. Richards.

The Crescent Co., Cincinnati, \$5,000. E. J. Babitt, B. C. Bruce, A. B. Chishelm, S. I. Lipp, R. B. Wise.

The Geller Realty Co., Cleveland, \$25,000. S. Geller, J. Rosenblum, K. L. Byrne, A. Kolinsky, S. J. Rothman.

The United Investment & Security Co., Akron, \$60,000. A. H. Engelbeck, J. F. Smith, F. R. Schoner, C. B. McDowell, A. H. Commins.

The Bee-Gee Sales Co., Cleveland, \$25,000. G. R. Bryan, J. F. Gleason, R. J. Lamb, F. G. Behringer, T. D. Lamb.

The Cleveland Furnace Co., Cleveland, \$1,000. H. T. Clark, E. R. Shields, C. C. Owens, P. J. Bickel, E. C. Dempsey.

The Lena Grain Co., Lena, \$25,000. C. F. Wilgus, A. W. Burton, G. R. Wilgus, E. W. Drake, J. L. Duer.

The Osborn Removal Co., Osborn, \$100,000. M. D. Rice, F. M. Copenhaver, H. R. Kendig, G. E. Bailey, H. E. Frahn, F. C. Massey, E. W. Burrows.

The Iron Products Co., Columbus, \$250,000. G. C. Bowman, C. L. La Monte, H. M. Henderson, J. G. Westwater, J. M. Butter.

The Hale Electric Manufacturing Co., Cleveland, \$1,250. W. W. Hale, W. R. Godrey, R. W. Anderson, V. C. Lynch, A. E. Lynch.

The Cincinnati Wood Products Co., Cincinnati, \$10,000. S. A. Headley, H. N. Smith, G. McManaman, A. Meyer, A. W. Kops.

The Shields & Allyn Lumber Co., Cleveland, \$200,000. A. M. Allyn, C. K. Arter, C. Follett, N. P. Beall, J. W. Eckelberry.

The Mid-West Cotton Co., Cleveland, \$112,500. J. A. Elder, L. S. Clements, J. H. Burkett, W. J. Owen, R. C. Hatfield.

The Griggs Mill & Motor Co., Junction City, \$50,000. G. W. Griggs, A. E. Griggs, C. T. Mercer, J. D. P. Elder, A. E. Lidderdale.

The L. E. Southern Motor Co., Cleveland, \$60,000. J. A. Elden, M. E. Molner, D. Gould, L. E. Southern, L. A. Cordrey.

The John D. Hardy Co., Cleveland, \$10,000. J. D. Hardy, J. C. Bushnell, E. E. Linden, L. M. Cowie, Frank Walner.

The Motor Rims Manufacturers Co., Cleveland, \$10,000. J. H. Smart, Geo. Wyman, I. M. Wissell, M. E. Molner, D. Gould.

The Uniontown Coal Co., Youngstown, \$750,000. L. S. Baldwin, A. M. Lyon, R. H. Kallmerten, H. E. Jones, J. H. C. Lyon, J. C. Irwin.

The United States Auto Accessor-

ies Co., \$10,000. J. Z. Wentzel, V. M. Miller, B. Wolfson, J. W. Taylor, J. W. Braun.

The Picto-Graph Co., Arlington, \$5,000. F. E. Beagle, O. T. Castor, L. W. Calvin, B. E. Houdeshell, A. E. Korske.

The Tappen Auto Electric Co., Lima, \$15,000. L. B. Moorhouse, C. L. Tappen, R. L. Foster, H. G. Tappen, H. W. Kidder.

Increases

The Euclid-Windsor Co., Cleveland, \$400,000 to \$450,000.

The Producers Supply & Manufacturing Co., Marietta, \$500,000 to \$750,000.

The Sober Oil & Gas Co., Dover, \$25,000 to \$50,000.

The North Canton Supply Co., Canton, \$20,000 to \$50,000.

The Thew Shovel Co., Cleveland, \$1,250,000 to \$1,373,750.

The Federal Tool & Machine Co., Dayton, \$25,000 to \$35,000.

The Auditorium Co., Dayton, \$300,000 to \$350,000.

The Euclid Avenue Lumber Co., Cleveland, \$50,000 to \$100,000.

The Forest City Mortgage Co., Cleveland, \$100,000 to \$300,000.

The Lexi Coal Co., New Lexington, \$35,000 to \$100,000.

The Union Improvement Co., Ash-tabula, \$5,000 to \$10,000.

The Lakeville Equity Exchange Co., Lakeville, \$10,000 to \$30,000.

The Union Playhouse and Amusement Co., Cleveland, \$10,000 to \$25,000.

The M. B. Farrin Lumber Co., Cincinnati, \$600,000 to \$1,100,000.

The National Machine Products Co., Cleveland, \$25,000 to \$50,000.

The Cleveland Provisions Co., Cleveland, \$1,000,000 to \$4,500,000.

The Lilly White Oil Co., Leipsic, \$500,000 to \$620,000.

The Geo. A. Rutherford Co., Cleveland, \$50,000 to \$150,000.

The Kronheim Furniture Manufacturing Co., Cleveland, \$25,000 to \$75,000.

The Rockford Equity Exchange Co., Rockford, \$25,000 to \$75,000.

The Albert Rees Davis Co., Cleveland, \$10,000 to \$15,000.

The Canton Produce Co., Canton, \$25,000 to \$60,000.

The Columbus Anvil and Forging Co., Columbus, \$60,000 to \$125,000.

The Dayton Iron & Steel Co., Dayton, \$30,000 to \$80,000.

The Imperial Fibre Products Co., Cleveland, \$1,000 to \$50,000.

The Canton Rim Co., Canton \$100,000 to \$500,000.

The Toledo Washer and Stamping Co., Toledo, \$15,000 to \$501,000.

The Venus Chocolate Co., Sidney, \$150,000 to \$500,000.

The Arbuckle-Ryan Co., Toledo, \$200,000 to \$400,000.

The Geyer-Dayton Advertising Co., Dayton, \$15,000 to \$100,000.

The Buchan Auto Supply Co., Mansfield, \$25,000 to \$50,000.

The Holgate Light & Power Co., Defiance, \$20,000 to \$80,000.

The Star Rubber Co., Akron \$1,200,000 to \$4,000,000.

The Columbiana Foundry Co., Youngstown, \$30,000 to \$150,000.

The Langtry Realty Co., Toledo, \$500.00 to \$20,500.

The G. H. Shartzler Co., Dayton, \$50,000 to \$150,000.

The G. H. Shartzler Co., Dayton, \$150,000 to \$200,000.

The Grant Lees Gear Co., Cleveland, \$400,000 to \$500,000.

The Mechanical Mold & Machine Co., Akron, \$150,000 to \$500,000.

The Electrical Sales & Engineering Co., Cleveland, \$1,000 to \$10,000.

The Fertel Dangler Wilson Co., Cleveland, \$25,000 to \$150,000.

The Wulff-Rim Co., Toledo, \$1,000 to \$300,000.

The Philadelphia & Cleveland Coal Co., Cleveland, \$100,000 to \$165,000.

The Glacial Sand and Gravel Co., Zanesville, \$10,000 to \$25,000.

The P. J. Brown Construction Co., Cleveland, \$10,000 to \$25,000.

The Simmons Motor Car Co., Cleveland, \$50,000 to \$100,000.

The Grandview Lumber Co., Columbus, \$20,000 to \$50,000.

The Cincinnati Iron & Steel Co., \$700,000 to \$1,500,000.

The Leesburg Building and Loan Association Co., of Leesburg, Ohio, \$200,000 to \$400,000.

The Fried-Biederman Co., Cleveland, \$100,000 to \$150,000.

The Barzer Sheet Metal Co., Cleveland, \$10,000 to \$100,000.

The Hoskin Shoe Co., Toledo, \$100,000 to \$300,000.

Decreases

The Dayton Iron & Steel Co., Dayton, \$50,000 to \$30,000.

PUBLIC UTILITIES COMMISSION

No. 1932—In the Matter of the Joint Application of Earl C. Bliss and The Burton Public Service Company, for Authority, Respectively to Sell and Purchase Public Utility Property. Prayer Granted.

(Dated March 16, 1920.)

This day this matter came on for consideration upon the joint application of Earl C. Bliss, the owner and operator of the electric light plant in the Village of Burton, Ohio, and The Burton Public Service Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent to an approval, by the Commission, of the sale, by the said Earl C. Bliss, and the purchase by said The Burton Public Service Company, of the aforesaid electric light plant in the Village of Burton.

Upon consideration whereof and being fully advised in the premises, and it appearing from the verified allegation in said application, and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purpose of this proceeding that the public will, upon said purchase and sale of said property, be furnished adequate services for a reasonable and just rate or charge therefore, and is satisfied that consent and authority for such purchase and sale of said property should be granted. It is, therefore,

Ordered, That the said Earl C. Bliss be, and hereby he is authorized to sell and convey to The Burton Public Service Company all of the various chattels and property composing the electric light plant now maintained and operated in the Village of Burton, Ohio; and said The Burton Public Service Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of five thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of

premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon, and for the purpose of this proceeding, that the public will, by such sale and conveyance of said property, be furnished adequate service for a reasonable and just rate, rental, toll charges therefore, and is satisfied that consent and authority for such sale and purchase of said property should be granted. It is, therefore,

Ordered, That said The Local Telephone Company (of Bellevue, Ohio) be, and hereby it is authorized to sell and convey to The Bellevue Home Telephone Company the certain rural telephone lines located in Lyra and Sherman Townships, Huron County, Ohio, and in Thompson Township, Seneca County, Ohio, more particularly described in a copy of a sale appended to the application herein as Exhibit "A," which exhibit, in so far as it describes said property, hereby is made a part of this order by reference; and said The Bellevue Home Telephone Company hereby is authorized to purchase said property and to pay therefore the agreed consideration of \$7,500.00. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the applicants file with this Commission schedules providing for their respective withdrawal from an inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service, or the authorization of the payment of the aforesaid consideration be binding upon this Commission in any future proceeding involving rates or service.

ATTORNEY GENERAL

Section 4410 General Code as Amended in 108 O. L. 248, Does not Impose the Duty of Caring for the Sick Poor Upon the Municipal Health District Board Exclusively, nor Does it Relieve the Township Trustees of Their Duties Under Section 3476 General Code, as Amended in 108 O. L. 272.

No. 1059 (Opinion Dated March 6, 1920.)

Hon. Isaac C. Baker, Prosecuting Attorney, Hamilton, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your recent request for the opinion of this department.

Your first two questions relate to the power of the district health board to elect and employ one of their own members as district commissioner.

It is believed that this question is practically answered by opinion No. 983, rendered by this department to the prosecuting attorney of Van Wert County, under date of February 3, 1920, a copy of which is herewith enclosed. While that opinion did not relate directly to the office or employment referred to in your inquiry, it is believed that the general rule therein discussed is alike applicable to such office or employment.

With the consideration of those general principles discussed in that opinion, Section 4411 G. C., as supplemented in 103 O. L., 463, may be considered. This section remains unaffected by the Hughes and Griswold acts, and provides in part:

“Section 4411-1: The board shall determine the duties and fix the salaries of its employes; but no member of the board of health shall be appointed as health officer or ward physician.”

It is noted that the reference here is to health officer the name of whose position is changed to health commissioner by the later act, but this section in force it is believed that the term used in Section 4411-1, “health officer” must be construed to mean “health commissioner.”

Your third question inquires as to whether or not, by reason of the amendments to the health laws contained in the Hughes and Griswold acts, it is made the exclusive and mandatory duty of the

district boards of health to care for the sick poor, thereby relieving the township trustees of that duty, and involves the construction Section 4410, which, in its present form, provides that the boards of health "shall care for the sick poor," and raise a question if the duty of caring for the sick poor is not cast exclusively upon the district board of health, thereby relieving the township trustees from that duty.

This section on its face, and standing alone, by the force of its mandatory provisions, would seem to cast that duty upon the board of health, but in view of other sections relating to the poor especially to the sick poor, this provision is somewhat ambiguous and resort must be had to the history of this section and its interpretation in connection with these other sections.

Prior to the Hughes law, Section 4410 provided in part:

"Each ward or district physician shall care for the sick poor and each person quarantined in his ward or district when such person is unable to pay for medical attendance."

However, the appointment or employment of ward or district physicians was optional under Section 4408 and in this way it was optional with the old board of health whether they should care for the sick poor by appointing such physicians, and the literal effect of it was that when so appointed Section 4410 provided that such physician shall care for the sick poor.

In the Hughes and Griswold acts, Section 4410 was amended to substitute the words "the board of health" in the place of the words "ward or district physician," and the rest of the section is the same. Section 4408 as it now stands after such amendments, makes no express provision for ward or district physicians, but provides that the municipal health district board "may also appoint physicians, public health nurses and other persons within the classes fixed by the state civil service commission of Ohio." It will be observed that the mandatory language "shall care for the sick poor," remains in Section 4410. However, there were certain other sections relating to the subject of the sick poor prior to the amendments to health laws referred to. Sections 3476 et seq., entitled "Poor," under Chapter 1 of Division 4, the subject of which is "Charity," are referred to.

Certain sections of this chapter were amended on the same date that the Hughes act was passed; the Hughes act being found in 108 O. L., p. 236, and the poor law amendments referred to being in 108

O. L., p. 266. Both of these acts were filed in the office of the secretary of state at the same time.

Section 3476 in part provides that:

"Subject to the conditions, provisions and limitations herein, the trustees of each township * * * shall afford at the expenses of such township * * * relief to all persons therein who are in condition requiring it."

Thus far the present section corresponds with the section prior to its amendment. The next sentence in this section, as amended,

"It is the intent of this act that townships * * * shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state * * *, as described in Sections 3477 and 3478."

It will not be necessary to quote all of these sections to illustrate the idea that the duty of caring for the poor, sick or otherwise, is placed upon the township by these sections.

Section 3480 may be quoted in part:

"When a person in a township * * * requires public relief or the services of a physician or surgeon, complained thereof shall be forthwith made by a person having knowledge of the fact * * *. If medical services are required * * * the physician called or attending shall immediately notify such trustees or officer."

This part of Section 3480 shows the legislative intention as being not to take from the township trustees all duties nor from the township as a whole all its obligations toward the sick poor. This section was undisturbed in the amendment in 108 O. L.

Section 3490 provides in part that:

"The trustees * * * may contract with one or more competent physicians to furnish medical relief and medicines necessary for the persons who come under their charge under the poor laws, but no contract shall extend beyond one year."

Neither was this section affected by the last amendment.

It may be pointed out that the sections last quoted are more special in their relation to the poor than those found in the board of health statutes which are not primarily associated or connected with the idea of charity, but more clearly suggest the idea of the police power of the state to prevent the spread of disease.

The effects of the amendment of Section 4410, when considered in connection with its history, is that it is to be construed as carrying into effect pretty much the same idea which it expressed previous to its amendment and that the word "shall," in so far as it

relates to the board of health, must be construed as meaning "may," as it is believed that this amendment, which may be termed as a casual or incidental amendment to make it conform to the new Hughes and Griswold acts, was not intended to amend or repeal the poor laws amended at the same time by the same general assembly.

From this it would follow that the opinion of this department is that Section 4410, as amended in 108 O. L., 248, does not impose the duty of caring for the sick poor upon the municipal health district board exclusively, nor does it relieve the township trustees of their duties under Sections 3476, as amended in 108 O. L., 272.

✽

A Mayor is Obligated to Keep Such Paper or Writings as are Duly Filed in His Office in Connection With a Case and Such Papers When so Filed are Public Records. The Mayor is not Obligated to Issue Receipts, but From a Business Standpoint Such Practice is Commendable.—It is Essential That an Affidavit be Filed Making Complaint Against a Person in a Criminal Case Before a Mayor is Authorized to Hear or Determine the Same.

No. 1034 (Opinion Dated February 27, 1920.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: In your communication of recent date you submit for an opinion the following questions:

- “1. Is it obligatory for the mayor to keep all the papers and records relating to a case on file as public records?
2. Is it mandatory that he give receipt?
3. Is it not mandatory that affidavit be filed in cases coming before the mayor?

Section 4550 G. C. provides:

“He shall keep a docket, and shall be entitled to receive the same fees allowed justices of the peace for similar services. He shall keep an office at a convenient place in the corporation, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, ‘Mayor of the city of —,’ ‘Mayor of the village of —,’ as the case may be.”

An examination of the statutes does not disclose any provisions other than above set forth expressly designating what records a

mayor is required to keep in connection with cases coming before him.

Under the provisions of Section 277 G. C. the auditor of state is chief inspector and supervisor of the Bureau of Inspection and Supervision of Public Offices, shall prescribe and require the installation of a uniform system of accounting, etc., which empowers him to prescribe other forms and records to be kept by the various officers of the state. Inasmuch as the facts stated in your letter do not indicate that there is any question raised under this provision, the same will not be further considered herein.

Section 13088 G. C. provides:

"Whoever maliciously alters, defects, mutilates, destroys, abstracts or conceals the whole or part of a record, authorized to be made by law, of or pertaining to a court, justice of the peace or a state, county, township or municipal office or officer, or other public record authorized by law or a paper or writing duly filed with, in or by such court, office or officer, shall be fined not more than three hundred dollars or imprisoned not more than three months, or both."

Under the provisions of this section there are two classes of documents the destruction of which is prohibited, namely: "records authorized to be made by law" and "a paper or writing duly filed with, in or by such court, office or officer."

In view of the provision of Section 13088 supra a mayor as well as all other persons, is prohibited from the abstraction or destruction of papers duly filed in his office, which of course operates the same as if said papers were expressly required to be kept. Records or papers of this character are not the personal property of the officer, but public records to be kept and preserved for the benefit of the public and said office is the custodian of the same. The policy of this state has been that public records shall be protected and preserved in strict compliance of law.

Replying to your first inquiry, you are advised that a mayor is obliged to keep such papers or writings as are duly filed in his office in connection with a case and that such papers or writings when so filed are public records.

Referring to your second inquiry, you are advised that the statutes do not specify and requirements relating to the mayor giving a receipt, and while such a practice is commendable from a business standpoint, in view of the fact that the law does not expressly or by implication make such a requirement, said inquiry must be answered in the negative.

It is assumed in the consideration of your first and second questions, as will be assumed in reply to your third inquiry, that you refer to mayors in cities which do not have police courts or municipal courts. In such cases the mayor is empowered to hear and determine prosecutions for the violation of ordinances and in other criminal proceedings his jurisdiction is concurrent with justices of the peace.

Under the provisions of Section 13494 G. C. the mayor may issue a warrant or the arrest of persons charged with a crime and hear and determine said causes, as provided by law.

Section 13496 G. C. provides:

"When an affidavit charging a person with the commission of an offense is filed with a justice of the peace, mayor or public judge, is he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused."

In view of the foregoing, it is clear that a mayor or other magistrate may not hear or determine a criminal case unless there has been an affidavit filed charging the accused with the commission of an offense prescribed by the ordinances of that city or the statutes of the state and a warrant has been issued in pursuance of the filing of said complaint.

In specific answer to your third inquiry, you are advised that it is essential that an affidavit be filed making a complaint against a person in a criminal case before a mayor is authorized to hear or determine the same.

✽

County Auditors, When Making Their Semi-annual Apportionments of Funds, Shall Retain at Each Such Semi-annual Apportionment One-half the Amount of the Estimate for Health Purposes Apportioned to Each Township and Municipality, as Provided in Section 1261-40 General Code, (Griswold Act) From the General Funds Due to Such Township and Municipality.

No. 1060 (Opinion Dated March 6, 1920.)

Hon. W. R. White, Prosecuting Attorney, Gallipolis, Ohio.

Dear sir: Acknowledgment is made of the receipt of your recent request or the opinion of this department as follows:

"Is the county auditor compelled, and is it his duty to deduct from the February distribution of taxes, the amount of money assessed against the townships for their share of the

expense of the county board of health, under the Hughes bill, and especially where the deduction so made will leave the townships bankrupt for other necessary funds."

In an opinion under date of September 9, 1919, (No. 610) to Hon. John L. Cable, Prosecuting Attorney, Lima, Ohio, this department construed Section 25 of the Hughes act, which as Section 1261-40 in the Griswold act, contains in the matter involved in your inquiry, practically the same provisions. A copy of this opinion is herewith enclosed and it will not be necessary to quote or discuss at length Section 1261-40 as it now stands.

One sentence may be quoted:

"The county auditor, when making his semi-annual apportionment of funds, shall retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality."

The succeeding sentence provides that such money "shall" be placed in a separate fund. In addition to what has been said of this section in the former opinion, it may be pointed out that in this act the county auditor, as such, has nothing to do with the determination of the amount to be raised or expended for health purposes and that his duties in retaining and segregating the health funds are ministerial. The evident legislative care exercised in this section to insure the availability of funds for health purposes, taken in connection with the mandatory "shall" which occurs repeatedly in this section, in connection with defining the auditor's duties therein, leads to a conclusion which may be stated in practically the language of the statute itself, to-wit;

County auditors, when making their semi-annual apportionment of funds, shall retain at each such semi-annual apportionment one-half the amount of the estimate for health purposes apportioned to each township and municipality, as provided in Section 1261-40 G. C. (Griswold act) from the general funds due to such township and municipality.

SUPREME COURT.

Hammond, County Treasurer, v. Winder, Receiver.

Taxation—State Tax Commission—Abstract Transmitted by County Auditor—Section 5612, General Code (107 O. L., 35)—Powers and Duties of Commission—Section 5612 to 5615, General Code—Duties of County Auditor Mandatory, When—Notice of Revaluation Unnecessary, When—Special Assessments and General Taxes Distinguished—Constitutional Law.

1. By the provisions of Section 5612, General Code (107 O. L., 35), it is the duty of each county auditor, when required by the Tax Commission of Ohio, to make out and transmit to the Commission an abstract of the real and personal property of each taxing district in his county, in which he shall set forth the aggregate amount and value of each class of real and personal property as it appears from his tax list and from the statements in his office.
2. The Tax Commission of Ohio is required by Sections 5612 to 5615, inclusive, General Code, to annually determine whether the real and personal property and the various classes thereof in the different counties, cities, villages and taxing districts have been assessed at their true value in money. If not, the Commission may increase or decrease the aggregate value of real or personal property, or any class thereof, in any such subdivision district, by such rate per cent. or amount as will place it on the tax list at its true value in money. The Commission is not empowered to act with respect to any particular piece or parcel of property of any particular owner in the taxing district. But it acts with reference to the aggregate value of the real and personal property, or any class thereof, in the district, except in cases of appeal under Section 5610, General Code, and with respect to property of public utilities.
3. When the county auditor has received from the Tax Commission a statement of an amount or rate per cent. to be added or deducted from the valuation of such property, or class thereof, in the manner provided by Section 5614, General Code, his duty is mandatory to forthwith add to, or deduct from each tract, lot or parcel of real estate or class of real property the required per cent., or amount of the valuation thereof, in the manner specified in Section 5615, General Code.
4. Where the action of the Tax Commission, pursuant to statute, relates to the aggregate value of real property, or a class thereof, in a taxing district as units, the fact that no notice is required to be given of such action does not render the statute unconstitutional or the action of the Commission invalid.
5. While special burdens by way of special assessments cannot be laid on property without notice to the owner and opportunity to him to be heard, no special notice of the proceedings by which general taxes are laid by aggregate assessments upon the property, or classes thereof, in counties or other taxing districts as units, is necessary. The statutory provisions under which the taxing authorities proceed in that behalf are sufficient notice in the absence of affirmative requirement by statute.

(No. 16272—Decided December 23, 1919.)

Error to the Court of Appeals of Perry county.

John H. Winder, Receiver of The Sunday Creek Coal Company, brought suit in the common pleas court of Perry county against

Charles W. Hammond, as County Treasurer, to obtain a decree enjoining the treasurer from collecting certain taxes which had been added by the county auditor to the tax lists of the county against certain real estate located in the county and owned by the company.

The petition sets out the property owned by the company in several taxing districts of Perry county and describes it as being of a particular class, that of coal bearing and mining properties. The petition states the aggregate valuation of this property as assessed for taxation prior to the increase complained of, and alleges that it was the true valuation thereof in money. It also states the amount of taxes due on said assessed valuation, to-wit, the sum of \$5,514.01, which is averred to be the true amount of taxes due on said property; and further states that after said assessment, to-wit, on or about the 15th day of November, 1917, the county auditor arbitrarily, capriciously, and without any investigation, evidence or information whatever to warrant such action, made an addition to the taxes upon said lands and tenements in the amount of 40 per centum upon the amount of taxes charged against said lands and tenements. The petition sets out that the said additions were made by the auditor without any notice served upon the receiver, or upon the company, and without publication of such proposed action in any newspaper, and that the plaintiff had no knowledge thereof until after the addition had been made and certified to the defendant as county treasurer for collection.

The petition further avers that the additions so made were without authority of law; and alleges that plaintiff tendered the true amount of taxes and brings the same into court and continues the tender until the hearing and judgment of the court.

The answer of the defendant admits the increase stated, but denies that it was made arbitray, capriciously, or without any investigation, evidence or information to warrant such action, and alleges that the said increased taxes arose out of the increase in the assessed valuation of the separately owned coal rights or properties of the company entered by the county auditor under statutory mandate, pursuant to an order made by the Tax Commission of Ohio; that upon the request of the Tax Commission of Ohio the county auditor as provided in Section 5612, General Code, made out and transmitted to the Tax Commission an abstract of the real and personal property of each taxing district of said county, in which abstract were set forth the aggregate amount and value of each class of real and personal

property in said county as appeared in said auditor's tax list or on the books, statements and returns on file in his office; that thereafter, pursuant to the provisions of Section 5613, General Code, the Tax Commission of Ohio proceeded to consider and determine whether the real and personal property and the various classes thereof in several counties, cities, villages and taxing districts of the state, including said taxing districts of Perry county, as shown by said abstract, had been assessed at their true value in money, and said commission did find and determined that the real and personal property and the various classes thereof in Perry county, as shown by said abstract, were assessed at their true value in money, except that a certain class of said property, to-wit, separately owned coal rights or property owned and held in the several taxing districts of the county, was not assessed at its true value in money, and with respect to this class of property that the same was assessed at less than its true value, and ordered that the assessed valuation of separately owned coal property in the county should be increased by 40 per cent.; that in obedience to an order transmitted to him by the commission, pursuant to the provisions of Section 5614, General Code, the auditor forthwith added to each tract, lot or parcel the required 40 per cent.

The answer further admits that no notice was served upon the plaintiff or the coal company with respect to such action increasing the valuation of the company's separately owned coal properties, and that no publication was made of the proposed action of the Tax Commission or of the county auditor in pursuance to the order of the commission.

Further answering, the defendant denies each and all of the allegations of the petition.

The cause was heard in the common pleas court on the plaintiff's petition, the defendant answer, and a motion by the plaintiff for judgment on the pleadings. The court sustained the motion and entered a decree permanently enjoining the defendant from collecting the taxes complained of, and, on appeal, the court of appeals of Perry county, entered a like decree. This proceeding is brought to reverse the judgments of the courts below.

Mr. John G. Price, attorney general; Mr. William J. Ford, special counsel, and Mr. Mell G. Underwood, prosecuting attorney, for plaintiff in error.

Mr. John T. Pyle, for defendant in error.

Johnson, J. Some ten years ago there had come to be in Ohio

more than usual discontent that results from inequalities in taxation.

One phase of it was manifested by a general feeling that the system in use for many years for the decennial appraisal of real estate for taxation was wholly inadequate, and resulted in glaring and unjust discriminations.

The constant variations in the actual and relative values of various classes of real estate in the different industrial, commercial and agriculture localities were regarded as imperative reasons for the adoption of a system by which a more frequent and intelligent appraisal of property should be made, in the hope of making an approach to the equality and justice which are necessary to give strength and vigor to measures of popular government.

The different governors and general assemblies have devoted themselves to the subject of improvements in the system, and substantial progress has been made. The effort should go on even though all realize that "no faultless tax plan e'er was or is or e'er shall be.

The decennial appraisal was abolished. The Tax Commission of Ohio was created, and its powers and duties have been enlarged from time to time.

Changes have been made in the new system in the light of experience, and the question presented in this case requires a determination of the state of the law at the time of the commencement of this action.

The court below entered a decree in favor of the defendant in error on the pleadings. This judgment was based on the conclusion that the answer stated no valid defense to the petition. As shown in the foregoing statement of the case the petition alleges three grounds upon which the prayer is based. Substantially they are: First, that the premises of the coal company were appraised and listed for taxation prior to the increase complained of at the true value thereof in money; second, that the county auditor arbitrarily, capriciously and without investigation made the addition complained of; third, that the addition was made without notice to the plaintiff or the company and without publication of the proposed action.

As to the first ground, it is traversed by the general denial contained in the answer. The second allegation is specifically denied in the answer, which alleges that the auditor's action was taken in obedience to statutory requirement under order of the

Tax Commission of Ohio, which was made pursuant to statutory provision. As to the third ground, the answer admits that no notice was given to the plaintiff or to the company of the action of the Tax Commission or the auditor. Therefore, the question remaining concerns the authority of the Tax Commission at the time it made the order complained of to make such an order: and, if it had such authority, whether or not it is necessary to give notice to taxpayers affected by and order increasing the taxable valuation of the property of a particular class in a particular taxing district. The action was taken with references to the taxes for the year 1917, so that the statutes to be considered are those then in force.

By the provisions of Section 5548, General Code (107 O. L., 38), each county is made the unit for assessing real estate for taxation purposes, and it is provided that the county auditor shall be the assessor for all the real estate in his county for the purposes of taxation, reserving however, to the Tax Commission the power to assess and value the property of public utilities. It is made the auditor's duty to ascertain whether the real property as it then appears on the tax duplicate is assessed for taxation at its true value in money, and to report his findings to the board of county commissioners, who shall at a hearing, after public notice, confirm, modify or set aside the same by order entered on their journal. If by such order it is determined that the real estate is not on the duplicate and its true value in money, the county auditor shall proceed to assess such real estate in such divisions or subdivisions.

Under Section 5548-1, General Code, after the county auditor has made the assessment of all the real estate in any taxing district in the manner authorized in the preceeding section, he is empowered on notice to the owner thereof to re-assess any part of the real estate in the district in the manner provided in that section, if he finds that the value has changed, or the property is not on the duplicate at its true value in money.

Section 5580, General Code, and those following on pages 40 and 41 of 107 Ohio Laws, to and including Section 5595, provide for the organization of a county board of revision, and by Sections 5605 and 5609, General Code, the board of revision is empowered on its own motion or on complaint to review the assessed valuation of real estate in any tax district which has been assessed and valued by the county auditor on the current year.

Section 5599, General Code, provides that the county board

of revision shall not increase any valuation or listed amount of taxable property without giving notice to the person in whose name the property affected thereby is listed, affording him an opportunity to be heard.

Section 5610, General Code, affords an appeal from the decision of the county board of revision to the Tax Commission of Ohio by any person affected or by the county auditor.

It will be observed that there is provided in the statutes a comprehensive system for the assessing and valuation of real estate and for re-assessing in the different counties and taxing districts of the state. There is also provision for notice to the public and to individuals particularly affected, as well for hearings and appeals in the manner above described. Then as part of the general scheme, the powers of the Tax Commission, which has state-wide jurisdiction, are defined and specified.

Section 5579, General Code, (106 O. L., 246), imposes upon the Tax Commission the duty to direct and supervise the assessment for taxation of all real and personal property of the state, and provides that the county auditor under the direction of the commission shall be the chief supervising assessing officer of his county. But there is not conferred upon the Tax Commission any jurisdiction to review or otherwise determine the assessment or valuation of any particular lot, parcel or tract of property in any taxing district, except on appeal from the decision of boards of revision, as provided in Section 5610, General Code. The appraisal of particular pieces of individuals is left to the local authorities.

The answer of the defendant in this case shows that the action of the Tax Commission, complained of in the petition, was taken pursuant to Sections 5612 to 5615, inclusive, General Code. Substantially those sections provide that when required by the Tax Commission each county auditor shall make out and transmit to it an abstract of the real and personal property of each district in this county in which he shall set forth the aggregate amount and value of each class of real and personal property; that the commission shall annually determine whether the real and personal property and the various classes thereof have been assessed at their true value, and, if it finds that any class of real or personal property in any county or district is not listed at its true value in money, it may increase or decrease the aggregate value of the real property or any class of real or personal property in such

county or district by such rate per cent. as will place it on the list at its true value in money; and that it shall transmit its conclusion to the county auditor who shall forthwith add to or deduct from each tract, lot or parcel of real property, or class of real property, the required per cent. The duty of the auditor in such cases is mandatory.

The manifest purpose of the legislature was to confer upon the Tax Commission the duty of equalizing aggregate tax values of various classes of property in the manner stated. It has no power under those sections to make any order with respect to the particular property of any taxpayer in the district. Its authority and its action must be taken with respect to all the property of the particular class as units, and concerns the aggregate value of the property in the particular class dealt with.

From what has been said it will be seen that the plan contemplates the Tax Commission as a directing and supervising authority, and that its orders are general, except in the case of appeal specially provided for as heretofore set forth.

It will be further noted that after the county auditor has made an assessment of all the real property in any district and desires to re-value or re-assess any part of the same, he is required to give notice to the owner thereof, but the statute does not require notice to be given by the Tax Commission of action taken by it pursuant to the statutory provisions above referred to. Acting in the nature of an equalization board, it is not required to give notice in order that its action be valid. A board of equalization may raise or lower the entire assessment of any particular district without notice to the individual taxpayer, or the people of the district, when it is made to appear that the assessment in one district is relatively higher or lower than in another. 27 Am. & Eng. Ency. Law (2ed.), 708.

The fact that the statute does not require notice to be given by the Tax Commission does not render it obnoxious to the constitution.

In the State Railroad Tax Cases, 92 U. S., 575, which were actions brought to restrain the collection of taxes, it was held that the action of the board of equalization in increasing the assessed value of the property of a railroad company, or an individual, above the return made to the board does not require a notice to the party to make it valid. The court say, at page 609: "If the increased valuation of property by the board without notice is void as to the

railroad companies, it must be equally void as to every other owner of property in the State, when the value assessed upon it by the local assessor has been increased by the board of equalization. * * * If they find that a county has had its property assessed to high in reference to the general standard, they may reduce its valuation; if it has been fixed too low, they may raise it to the standard. When they raise it in any county, they necessarily raise it on the property of every individual who owns any in that county * * * The very moment you come to apply to the individual the right claimed by the corporation in this case, its absurdity is apparent." To the same effect are *Lewis, Auditor, v. State, ex rel.*, 69 Ohio St., 473, and *Lander v. Mercantile Bank*, 186 U. S., 458.

A general tax is very different from a special assessment. A burden by way of a special assessment cannot be levied upon property without notice to the owner, and the special assessment must not exceed the special benefit. If it does, it impairs the inviolability of private property guaranteed by the constitution. *Walsh v. Barren, Treas.*, 61 Ohio St., 15.

But the authorities are uniform that where such a board in the exercise of statutory powers acts not upon the property assessments of individual or particular taxpayers, but upon the aggregate assessments of various classes in the several taxing districts as units, notice is required to be given to individual property owners who may be affected by the action of the board in increasing the valuation of all the property or the property of a particular class in the taxing district. *Hubbard v. Goss, Treas.*, 157 Ind., 485; *Bi-Metallic Investment Co. v. State Board of Equalization of Colorado*, 239 U. S., 441, and *Spalding, Tax Collector, v. Hill*, 86 Ky., 656.

In *Bi-Metallic Co. v. Board of Equalization*, supra, it is said at page 445: "The question then is whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned—here, for instance, before a superior board decides that the local taxing officers have adopted a system of undervaluation throughout a county, as notoriously often has been the case."

The impossibility of the State Tax Commission giving notice to each property owner before it acts with reference to valuations of different classes of property in the different taxing districts is very apparent.

Moreover, the fact that provision has been made by the gen-

eral assembly in the enactment of Section 12075, General Code, by which suit may be instituted in the common pleas court to enjoin the collection of illegal taxes assessed against any taxpayer, fulfills the constitutional requirement of due process of law in the assessment and collection of taxes. Davidson v. New Orleans, 96 U. S. 97; State, ex rel., v Jones, Auditor, 51 Ohio St., 492, 516, and The C. & E. Rd. Co. v. Keith et al., 67 Ohio St., 279, 292.

The taxpayer is afforded full opportunity for relief against improper valuations by appearing before the county board of revision in the exercise of its function of collecting tax valuations on complaint, and on appeal to the Tax Commission under the provisions of Section 5610, and by the action in common pleas court above referred to.

We think it clear that the allegations of the answer setting forth that the action of the county auditor was taken in obedience to the order of the Tax Commission of Ohio, which had proceeded in full compliance with the provisions of Sections 5612 to 5614, inclusive, General Code, stated a good defense and that no notice of such action was required in order to give it validity under the state or federal constitution.

The judgment of the court of appeals will be reversed and the cause remanded for further proceedings in accordance with this opinion.

Judgment Reversed.

Jones, Matthias, Wanamaker and Robinson, JJ., concur.

Merrell, J., not participating.

SECRETARY OF STATE

NEW CORPORATIONS

The Hughes-Peters Electric Co., Columbus, \$75,000. J. R. Hughes, H. W. Peters, J. T. Hughes, J. Edwards, D. M. Rusk.

The Cleveland Wax Paper Co., Cleveland, \$60,000. F. A. Sarstedt, G. A. Sarstedt, B. R. Smith, H. L. Frederichs, G. M. Walsh.

The Slovak Provision Co., Bellaire, \$15,000. A. Mikulic, M. Klempa, L. Palkovic, J. Bronck, Jonh Zilka.

The Templar Motors Co., Cleveland, \$10,000,000. M. F. Bramley, J. H. Orgill, W. O. Cooper, A. M. Dean, D. C. Reed.

The Rissmann Building & Realty Co., Lorain, \$100,000. P. A. Rissmann, P. Deits, P. W. Cook, C. F. Wolf, H. D. Walter.

The Catawba Orchard Co., Port Clinton, \$250,000. V. H. Davis, F. M. Raymond, E. D. Howard, Hugh Huntington, D. Howard.

The Parker Soap Co., Cleveland, \$10,000. W. H. Livingstone, P. R. Smith, G. A. Squire Jr., P. F. O'Dea, C. F. Snipe.

The Wm. Hinterschied Co., Columbus, \$40,000. A. Hinterschied, U. Hinterschied, M. J. Hinterschied, C. C. Hinterschied, W. T. Hinterschied.

The General Plumbing & Electric Co., Toledo, \$25,000. N. J. Walinski, P. A. Bykowski, W. L. Monczynski, D. F. Hubbard, E. M. Flowers.

The Kimber Oil & Gas Co., Nelsonville, \$30,000. H. H. Sisson, L. J. Eberle, D. R. McGill, R. W. Parks, T. W. Wilson.

The Hellenic Petroleum Gas Co., Ashtabula, \$1,000. C. R. Moore, J. E. Pilmer, D. F. Dunlavy, C. W. Shelton, C. N. Bellios.

The Peerless Theatre Supply Co., Toledo, \$10,000. P. Munzesheimer, Mrs. H. M. Rosethall, D. R. Munzesheimer, L. H. Louis, M. T. Rosenhall.

The Greater Sandusky Realty Co., Sandusky, \$1,050,000. W. J. Sprow, I. Kaplan, R. W. Hare, J. A. Himmerlein, E. W. Alstaetter, F. F. Eubanks, V. C. Schaub.

The American Fly-Proofing Co., Kinsman, \$25,000. L. N. Sperling, G. G. Johnson, F. W. Fobes, F. W. Kingsley, A. G. Birrell.

The Lake Motor Sales Co., Cleveland, \$50,000. R. B. Livie, G. P. Kurtz, W. P. Tims, C. G. Shaughnessy, J. E. Latimer.

The Trumbull Construction Co., Warren, \$40,000. W. M. Yount, A. C. Hunt, M. C. W. Boyd, W. E. Calderwood, A. B. Clark.

The Marsh Motor Car Co., Brooklyn, \$1,000. H. D. Crowley, H. L. Burkduhl, H. T. Clark, F. S. Whitcomb, E. R. Shields.

The Northern Savings & Trust Co., Cleveland, \$250,000. W. D. Young, J. H. Whitelaw, J. A. Purcell, H. Bialosky, H. S. Rivitz.

The Fertile Chemical Co., Cleveland, \$20,000. W. R. Daley, A. Cullen, S. C. Smith, H. P. Baker, F. X. Cull.

The Marcus Iron & Steel Co., Cleveland, \$10,000. J. S. Kohn, L. J. Kohn, C. H. Phipps, T. J. Fraser, L. M. Young.

The Morton Investment Co., Akron, \$100,000. I. N. Loeser, M. E. Kelly, M. M. Roche, K. D. Carter, F. G. Mooney.

The Safety Equipment Service Co., Cleveland \$50,000. B. W. Nutt, I. N. Loeser, M. E. Kelly, M. M. Roche, K. D. Carter.

The Cleveland Diamond Importing Co., Cleveland, \$30,000. D. F. Powers, N. L. Lewis, M. A. Connelly, H. M. Ungerman, H. B. Appell.

The Cleveland Trucking & Carting Co., Cleveland, \$15,000. R. Z. Prosser, M. L. Corbett, G. E. Fullerton, W. G. Curtis, W. S. Kassulker.

The Guntrum-Meyers & Clemons Sons Co., Cincinnati, \$10,000. L. E. Guntrum, A. L. Clemons, C. A. Meyers Jr., C. W. Clemons, J. N. Catch.

The Harmon Realty Co., Massillon, \$25,000. L. C. Wiggins, C. C. Fair, V. C. Fair, M. E. Kalp, W. A. Kalp.

The Champion Motor Car Company, Cleveland, \$525,000. H. M. Fransworth, F. M. Fransworth, B. H. Fransworth, E. E. A. Metzger, C. Hessler.

The Ever-Wear Products Company, (Paints), Cleveland, \$10,000. J. Bloomberg, A. S. August, E. E. Wolf, H. A. Shibley, H. K. Spero.

The Citizens Bank Co., Prospect, \$30,000. N. E. Fleming, J. N. Freeman, J. W. Humphreys, W. M. Humphreys, F. M. Hazin.

The Deegan-Taylor Realty Co., Cleveland, \$25,000. J. L. Deegan B. R. Taylor, A. L. Bishop, D. K. Henderson, H. Friedel.

The American Jugoslav Printing & Publishing Co., Cleveland, \$20,000. W. Sitter, L. Ogrine, J. F. Durn, J. F. Bohinc, J. Spenko.

The Record Index Co., Cincinnati, \$10,000. J. J. Hanningan, F. C. McManus, C. Lutz, E. D. Woodward, C. J. Bates.

The Ludwig Drug Co., Toledo, \$60,000. W. E. Ludwig, F. S. Mockler, M. Tolley, F. H. Coombs, H. A. Ramsey.

The Union Motor Co., Akron, \$50,000. H. C. Williams, L. D. Schrov, H. W. Tham, C. M. Crawford, C. W. McLaughlin.

The Commonwealth Commercial Co., (General Merchandise), Cleveland, \$10,000. J. Wetzel, R. McAuleff, S. A. Stevenson, W. J. L. Estrange, J. J. L. Estrange.

The Xenia Farmers Exchange Co., Xenia, \$50,000. J. T. Hutchinson, H. Anderson, B. D. Conklin, E. T. McClelland, H. M. Eavey.

The Eaton Farmers Equity Co., Eaton, \$50,000. S. W. Buroff, J. H. Hart, A. H. Christman, C. S. Paddock, G. Morningstar.

The Susan, Jane Oil & Gas Co., Holgate, \$30,000. W. H. Groll, I. W. Arnold, J. M. Shockey, F. Biler, H. H. Myer, C. Richbolt, C. T. Groll, C. E. Richbolt.

The Circle Co., (Real Estate) Cleveland, \$210,000. L. W. Kelley, H. O. Evans, W. H. Davis, R. D. Jacobs, R. A. Crider.

The Kenova Mining Co., Ashland, \$200,000. L. M. Mathews, J. E. Matthews, D. C. Reed, R. C. McKnight, M. C. Hobart.

The Ohio Grocery Co., Struthers, \$200,000. J. M. Modarelli, D. K. Scali, E. Torriele, E. A. Carfora, E. L. Burns.

The Cleveland La Fayette C., Cleveland, \$200,000. D. L. Gardiner, E. L. Mason, C. H. Chisholm, D. L. Rockwell, F. R. Marvin. (Motor Car)

The Household Electric Appliance Co., Columbus, \$20,000. E. W. Hoyt, F. M. Bates, L. A. Alcott, F. E. Poze, D. H. Armstrong.

The Ohio Service Printing Co., Lorain, \$50,000. N. C. Wieland, S. A. Ault, C. Holt, C. C. Noel, U. Dietzler.

The Fostoria Milk Products Co., Fostoria, \$5,000. E. L. Wirebaugh, W. J. Fraver, W. J. Lefferson, M. Fox, E. M. Barker.

The Port Clinton Co-operative Co., Port Clinton, \$10,000. C. B. Muggy, D. W. Payne, E. Riggins, J. W. Barrington, F. Laughlin.

The Henderson Laundry Co., Cleveland, \$10,000. G. A. Henderson, A. H. Dorsey, S. Fairfax, W. Irwin, G. J. Tate.

The Allison-Harris Construction Co., E. Liverpool, \$10,000. L. W. Allison, L. B. Allison, B. O. Harris, M. A. Harris, B. L. Bennett.

The Kresser Plumbing & Heating Co., Findlay, \$10,000. A. F. Kresser, L. M. Harris, J. F. Kresser, A. M. Kresser, L. A. Turner, F. Kresser.

The Bowen-Hasset Co., (Brogerage), Youngstown, \$10,000. R. R. Hasset, R. C. Patton, V. A. Marco, R. M. Winters, F. M. Lynch.

The Fleton & Co., (stocks), Cleveland, \$10,000. D. R. Wilkin, J. M. Schultz, M. I. Buelow, C. A. Alexander, Q. H. Findley.

The Contractors' Employment Co., Cleveland, \$10,000. S. A. Frolick, M. L. McCombs, W. E. Minshall, W. G. Kerr, M. G. Novak.

The Boardman Oil and Gas Co., Youngstown, \$200,000. J. W. Monahan, F. Z. Troesch, A. J. Gecan, W. H. Ludt, W. E. Bachop.

The Associated Motor Magazines Co., Cincinnati, \$5,000. F. C. Ziegler, H. C. Rick, G. Redeker, L. B. Neyer, C. M. Price.

The Whitney Tractor Co., Cleveland, \$1,000,000. E. E. McCloud, S. E. McCloud, S. B. Fitzsimmons, M. A. Grady, A. F. Gonder, H. C. Bernous.

The Bellefontaine Development Co., (Real Estate), Bellefontaine, \$50,000. I. N. Zearing, W. T. Haviland, D. W. Askren, J. H. Denman, D. Cutilla, P. E. Powell, J. P. Aikin.

The Farmers' Co-operative Elevator Co., Somerset, \$30,000. E. G. Melock, W. A. Clouse, J. A. Young, M. Emmert, J. W. Drumm, C. Barnes, E. W. Petty, G. F. Shrider.

The Marsh Lumber Co., Dover, \$100,000. A. C. Marsh, F. J. Huff, J. H. Marsh, W. P. Marsh, J. J. Marsh.

The Thomart Motor Co., Akron, \$30,000. B. J. Amer, M. L. Snyder, J. B. Seiber, N. B. Roby, W. S. Hutcheson.

The Satterfield Motor Co., Canton, \$150,000. E. E. Downs, W. C. Satterfield, C. M. Cranston, S. R. Weimer, H. U. Pratt.

The Park View Savings and Loan Assoc., Cleveland, \$200,000. C. V. Liggett, C. E. Clark, W. W. Warren, F. D. Barnes, W. H. Fahrenbach.

The Selman-Benjamin Cloak Co., Cleveland, \$50,000. J. Selmanovitz, J. G. Selman, S. Benjamin, C. N. Krieg, Stella Halama.

The Miami Valley Drug Co., Dayton, \$200,000. J. O. Arnold, H. A. Tressler, J. F. Gallaher, F. P. Todd, Carl A. Schmidt, W. P. Jenkins, F. D. Christion.

The Imp Products Co., Cleveland, \$50,000. H. G. Sherwood, J. G. Gwizdalski, A. J. Lukewinski, J. A. Probola, M. P. Knols.

The Herman Machine & Tool Co., Akron, \$40,000. L. Herman, O. Lehner, J. C. Herman, F. J. Karg, L. H. Knabel.

The Porter Cement Products Co., Barberton, \$10,000. H. J. Porter, J. C. Baker, J. Baker, C. P. Grigsley, I. B. Amstutz.

The Ontario-St. Clair Co., Cleveland, \$25,000. B. D. Gordon, A. M. Vell, A. J. Schanfarber, C. K. Allen, Chas. K. Allen.

The Mahoning West Branch Realty Co., Kinsman, \$100,000. G. H. Platt, J. A. Hobart, B. D. Lobaugh, H. L. Sharp, C. M. Trunkey.

The Standard Subscription Co., Columbus, \$10,000. H. Campbell, L. forecraft, C. C. Gump, E. Ullon, P. bolan.

The Atlas Finance Co., Cleveland, \$25,000. J. F. Rybak, E. A. Sicha, S. Broz, M. J. Cisar, C. F. Fanek, V. Palda.

The Farmers' Electric Light and Power Co., Milan, \$15,000. G. S. Balom, F. O. Kurtz, A. K. Zorn, H. A. uhl, C. H. Everingham.

The Highway Motors Co., Defiance, \$1,500,000. O. H. Kettenring, A. M. earson, T. T. Shaw, R. P. Kettenring, H. S. Reynolds, J. W. Wright, H. Belknap, J. W. Swartz.

The Cleveland Structural Steel Co., Cleveland, \$100,000. J. Ruthowski, E. A. Kolroy, A. Ruthowski, F. Roehl, J. Woide.

The Great Lakes Sash & Door Co., Cleveland, \$100,000. E. A. Elder, L. G. Steuer, A. L. Steuer, C. A. Lefkovitz, A. L. Krejci.

The Gouvy Drug Co., Cleveland, \$10,000. M. C. Gouvy, E. A. Gouvy, M. E. Gouvy, R. E. Gouvy, M. B. Gouvy.

The Spring Grove Light & Power Co., Bethel, \$10,000. G. W. Bush, W. C. Browning, W. H. Thompson, W. H. Davis, L. A. Kellina, C. W. Cook, W. L. Busch.

The General Patents Holding Co., Cleveland, \$20,500. W. E. Patterson, C. E. Mahon, H. E. Pack, R. A. Mahon, H. D. Burnett.

The S. N. Sutter Co., Cleveland, (Autos), \$50,000. A. Coldman, M. Garber, G. W. Poppleton, E. Kopp, C. D. Reich.

The Columbus Isko Co., Columbus, \$25,000. (Refrigerating Machines) H. R. Tingley, O. W. Newman, S. A. Hoover, G. R. Hedges, K. Henderson.

The Chaney & Williams Co., Cleveland, \$50,000. (Concrete Work), M. M. Chaney, H. Williams, W. L. Flory, C. W. Sellers, S. L. Orr.

The Reserve Realty and Mortgage Co., Warren, \$500,000. C. B. Lovelless, E. J. Thomas, S. S. Smith, Jr., F. C. March, H. M. Doolittle.

The New York Amusement Co., Cleveland, \$10,000. M. Friedman, S. C. Garber, L. Lubisky, H. Baer, G. N. Soderman.

The Market Street Tire Company, Youngstown, \$10,000. W. J. Walsh, F. A. Dietrich, W. L. McConnell, W. C. Wilhelm, Dale Dietrich.

The McElrath Building Co., Cleveland, \$50,000. S. Yudkoff, A. Yudkoff, L. Yudkoff, A. P. Sargol, Frank Andrak.

The Hancock County Co-operative Milk Co., Findlay, \$5,000. C. L. Ebersole, E. N. Seever, C. L. Mergenthaler, B. Thomas, A. E. Kerns.

The Valley City Mortgage & Loan Co., Warren, \$250,000. R. V. Marshall, J. H. Marshall, W. C. Alexander, W. L. Hammond, C. I. Pontius.

The Original Silver Seal Ladies Band Co., Cleveland, \$500. E. Johnson, L. E. Starks, A. M. Johnson, D. Brown, G. Pulley, B. Williams, M. Scott, A. McMer.

The Clark Coal and Mining Co., Uhrichsville, \$30,000. M. H. Harrah, V. Fawcett, J. G. Davis, H. O. Snyder, Mrs. F. Harrah.

The Charles S. Ferris Lumber Co., Cincinnati, \$50,000. J. H. Ferris, A. M. Ferris, E. Ferris, F. H. Lee, J. W. Sadlier.

The Cleveland Cam Shaft Co., Cleveland, \$100,000. C. R. Cross, M. I. Beulow, J. H. Schultz, D. V. Fisher, W. H. Findley.

The Air City Tool Co., Dayton, \$25,000. C. B. Cacchione, M. A. Russell, C. W. Dale, H. Huber, I. W. Detamore.

The Baumel Mandel Co., Cleveland, \$15,000. (Wearing Apparat). A. Baumel, J. Mandel, H. Newman, D. Copland, M. Walters.

The Walter Ice Co., Cleveland, \$75,000. A. Becker, J. Walter, J. C. Barkley, B. W. Denner, G. F. Decker.

The Tri-State Glass Co., Toledo, \$500. G. J. Seiss, G. A. Brakeman, C. E. Strubble, W. H. Swetland, J. A. Grimes.

The Shaker Heights Hospital Co., Cleveland, \$10,000. A. E. Hahn, I. N. Loeser, M. M. Roche, M. E. Kelly, K. D. Cater.

The Paramount Auto Parts Company, Cincinnati, \$50,000. F. S. Roahn, T. M. Alderman, J. J. Shevlin, W. Field, E. A. Mardorf.

The Waite Taxicab and Livery Co., Cleveland, \$750,000. J. H. O'Leary, B. O'Brien, A. Raabe, W. F. Miller, J. H. Maloney.

The Ornamental Products Company Cleveland, \$10,000. I. Grohs, P. Kuederle, M. L. Harrington, S. I. Powell, F. M. Wheeldin.

The South End Cartage Co., (Transferring), Cleveland, \$10,000. J. H. Morris, S. R. Driffeld, M. Beck, A. Fleischer, M. H. Ford.

The Cleveland-Callum Company, (Florists), Cleveland, \$10,000. E. J. McCallum, J. A. McLaughlin, H. P. Boyd, J. Guenther, W. H. Temblett.

The Co-operative Oil & Gas Co., Fostoria, \$50,000. H. W. Pankhurst, W. Henry, O. G. Toepppe, C. E. Brewer, J. H. Reeves, R. B. Henderson, A. T. Binkley.

The Lewis Electric Co., Massillon, \$10,000. J. C. Lewis, F. L. Lewis, D. R. Lewis, M. J. Lewis, J. M. Lewis.

The Cedarville Farmers Grain Co., \$50,000. A. Cummins, J. Ritstick, W. H. Smith, W. Conley, R. C. Watt.

The Walsh-Newman Constructive Co., Akron, \$25,000. A. H. Commin, C. B. McDowell, E. W. Bronse, J. I. Smith, F. Schoner.

The Martin Jewelry Co., Cleveland, \$25,000. W. Martin, R. H. Davis, H. Fiebach, M. Sainsbury, E. A. Blyon.

Increases.

The Sandusky Gas & Electric Co. Sandusky, \$1,300,000 to \$1,500,000.

The Mohican Rubber Co., Ashlar, \$25,000 to \$200,000.

The Griswold Co., Warren, \$65,000 to \$150,000 (common stock).

The Griswold Co., Warren, \$20,000 to \$150,000 (preferred stock).

The Elyria Enameled Products Co. Elyria, \$500,000 to \$1,000,000.

The Dayton Realty Co., Dayton, \$5,000 to \$75,000.

The Woodland Terminal Co., Cleveland, \$1,000 to \$200,000.

The R. B. White Lumber Co., Newark, \$125,000 to \$250,000.

The Republic Mercantile & Elevator Co., Republic, \$10,000 to \$15,000.

The Bennett-Bull Packing Co., Sney, \$50,000 to \$100,000.

The Bucyrus Copper Kettle Works Co., Bucyrus, \$50,000 to \$100,000.

The Portsmouth Supply Co., Portsmouth, \$10,000 to \$100,000.

The Letter Shop Co., Cleveland, \$15,000 to \$50,000.

The Whitney-Blaine-Wilderm Co., Toledo, \$12,000 to \$50,000.

The Ashtabula Bow Socket Co., Ashtabula, \$100,000 to \$200,000.

The Central Grain & Milling Co., Columbus, \$10,000 to \$100,000.

The Reliable Trunk Manufacturing Co., Cleveland, \$20,000 to \$50,000.

The Marion Packing Co., Marion, \$200,000 to \$500,000.

The Ohio Securities Co., New, \$1,000 to \$750,000.

The Warner & Swasey Co., Cleveland, \$3,000,000 to \$10,000,000.

The Hubbell Tire & Rubber Co., Cleveland, \$200,000 to \$1,200,000.

The Columbia Coal & Power Co., Salem, \$75,000 to \$400,000.

The Welch-Bennett Piano Co., Cincinnati, \$15,000 to \$25,000.

The Springfield Commercial Improvement Co., Springfield, \$10,000 to \$100,000.

Decrease

The Fremont Brewing Co., Fremont, \$100,000 to \$5,000.

PUBLIC UTILITIES COMMISSION

No. 1920—In the Matter of the Publication of The Cleveland Electric Illuminating Company for Consent and Authority to Issue Its Seven Per Cent. Preferred Capital Stock of the Par Value of Three Million Dollars (\$3,000,000.00). Prayer Granted.

(Dated March 19, 1920.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard upon the application of The Cleveland Electric Illuminating Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking the consent and authority of the Commission to issue and dispose of three millions dollars, par value, of seven per cent. preferred capital stock, the proceeds thereof to be applied toward the reimbursement of applicant's treasury for the sum \$4,608,773.41 (not procured by the issue of stocks, bonds, notes or other evidences of indebtedness, nor heretofore capitalized or authorized to be capitalized by the issue of capital stock or other securities under authority of this Commission) expended therefrom, within a period of five years next preceding the date of the filing of the application herein and to the first day of January, 1920, for the provision of additions, extensions and improvements to applicant's facilities:

Upon consideration whereof, and being fully advised in the premises, the Commission finds:

That, within the five years next preceeding the date of the filing of the application herein and to the first day of January, 1920, the applicant actually expended from its treasury for the provisions of net additions, extensions and improvements to its facilities, the sum of \$4,608,773.41, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness, and none of which has heretofore been capitalized or authorized to be capitalized by the issue of stock or other securities under authority of this Commission, and

That the issue of applicant's said preferred capital stock of the par value of \$3,000,000.00 is reasonably required and the money to be procured thereby necessary for the partial reimbursement, to the extent of the proceeds of said capital stock,

of applicant's treasury for the aforesaid uncanceled expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Cleveland Electric Illuminating Company be, and hereby it is authorized to issue its seven per cent. preferred capital stock of the total par value of three million dollars (\$3,000,000.00) and that said capital stock be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The partial reimbursement, to the extent of such proceeds, of applicant's treasury for the sum of \$4,608,773.41 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness, and not capitalized or authorized to be capitalized by a previous order of this Commission authorizing the issue of stock or other securities) actually expended therefrom, within the period of five years next preceding the date of the filing of the application herein and to the first day of January, 1920, for the provision of net capital additions, extensions and improvements to its facilities. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of the issue and disposition of said capital stock and the expenditures of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1924—In the Matter of the Application of The Lima Telephone and Telegraph Company for Authority to Issue and Sell \$35,000.00 of Its Capital Stock. Prayer Granted.

(Dated March 18, 1920.)

This day, (it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application of The Lima Telephone and Telegraph Company, (a corporation duly organized and existing under and by virtue of the laws of Ohio), asking consent and

authority of this Commission to issue and sell seventeen thousand, five hundred dollars, par value, of its preferred and its common capital stocks, respectively, the proceeds thereof to be applied toward the reimbursement of its treasury for the monyes, not procured by the issue of stocks, bonds, notes or other evidences of indebtedness, expended therefrom, within the five years next preceding the date of the filing of the application herein, and to the first day of January, 1920:

Upon consideration whereof and being fully advised in the premises, the Commission finds from the pleadings and exhibits filed herein and its independent investigation and inquiry thereupon:

(1) That, within the period July 1, 1918 and December thirty-first, 1919, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$116,278.00, none of which was procured or obtained by the issue of stock, bonds, notes or other evidences of indebtedness, but that authority has heretofore been granted by this Commission for the reimbursement of \$65,000.00 of said sum from the proceeds of certain capital stocks of the applicant, leaving, as of January first, 1920, such expenditures of the sum of \$57,278.00 subject for capitalization, and

(2) That the issue of applicant's preferred and common capital stocks of the par value of \$17,500.00, each, is reasonably required and the money to be procured thereby necessary for the partial reimbursement, to the extent of the proceeds thereof, of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said capital stocks should be granted. It is, therefore,

Ordered, That said The Lima Telephone and Telegraph Company be, and hereby it is authorized to issue its common stock of the par value of seventeen thousand, five hundred dollars, (\$17,500.00), and its six per cent. preferred capital stock of the par value of seventeen thousand, five hundred dollars (\$17,500.00), and that said capital stocks be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stocks be devoted to and used for the following purposes, and no other, to-wit: The reimbursement, to be the extent of such proceeds, of applicant's treasury for the sum of \$51,278.00 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, to the first day of January, 1920,

for additions, extensions and improvements to its facilities. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stocks and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 1952—In the Matter of the Application of Detroit, Toledo and Ironton Railroad Company for Authority to Issue Equipment Trust Notes in a Sum Not to Exceed \$879,720.00. Prayer Granted.

(Dated March 23, 1920.)

This day, (it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application of Detroit, Toledo and Ironton Railroad Company for the consent and authority of this Commission to the execution of an agreement, proposed to be entered into between Walker D. Hines, Director General of Railroads, the applicant company and the Guaranty Trust Company of New York (or such other trust company as may be designated) as trustee, establishing Equipment Trust No. 28; and to the issuing by the applicant of equipment notes in a principal amount equal to the purchase price to the United States of the equipment described in said petition, but not exceeding a principal amount of eight hundred seventy-nine thousand, seven hundred and twenty dollars (\$879,720.00), which is the maximum price of such equipment as set forth in said petition, and the delivery thereof to said trustee, to be, by it, authenticated and delivered to or upon the order of the Director General of Railroads, to reimburse the United States for the cost of said equipment, as authorized and provided by an Act of Congress, approved November 19, 1919 and mentioned in the petition.

And it appearing to the Commission that said equipment has been ordered and provided by the President of United States pursuant to authority of an Act of Congress, approved March 21, 1918, for use upon the lines of the applicant company, which proposes to secure the use and, ultimately, the ownership of said equipment under and pursuant to the terms of said trust agreement, by means of the conditional sale therein provided for; and that the making of said agreement and the issue and delivery of said equipment notes

as prayed, are reasonably required and necessary for the acquisition by said applicant company of additional property and equipment, to be used and useful in the prosecution of its facilities, but not for replacements, and the Commission being satisfied that its consent and authority should be granted as prayed, it is, therefore,

Ordered, That the said Detroit, Toledo and Ironton Railroad Company be, and hereby it is authorized to execute with Walker D. Hines, Director General of Railroads (or his successor as such) and Guaranty Trust Company of New York (or such other trust company as may be designated) as trustee, an agreement substantially in the form of the agreement annexed to the petition herein and marked exhibit "B," establishing an equipment trust, to be designated "Equipment Trust No. 28"; also to execute and deliver to said trustee, to be, by the latter, authenticated and delivered to or up on the order of the Director General of Railroads, its equipment notes in a principal amount equal to the purchase price of the above designated equipment, but not exceeding eight hundred and seventy-nine thousand, seven hundred and twenty dollars (\$879-720.00), which sum equals the maximum purchase price of said equipment, as shown by the petition herein, for the reimbursement of the United States for the cost of said equipment; said equipment notes to be divided into fifteen (15) series, each for an aggregate principal amount equal to one-fifteenth ($1/15$) of the aggregate principal amount of said notes, and maturing respectively, on the fifteenth day of January of each of the years 1921 to 1935, both inclusive, and to bear interest at the rate of six per cent (6%) per annum from the fifteenth day of January, 1920, payable semi-annually, and to be issued and delivered at par and in all respects according to the provisions of said trust agreement. It is further

Ordered, That the applicant make verified report to this Commission of the issuance and disposition of said notes, within thirty (30) days after the delivery of the same or any part thereof.

*
J

No. 1916—In the Matter of the Application of The Hamilton Service Company for Authority to Issue Securities. Prayer Granted.

(Dated March 26, 1920.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Hamilton Service

Company, (a corporation duly organized and existing under the laws of Ohio), asking consent and authority of this Commission to issue its common capital stock in such amount as this Commission shall determine to be proper, to enable the applicant to pay the consideration for the property and assets of The Hamilton Utilities Company, the purchase of which by the applicant, was duly consented to and authorized, for a total consideration of \$327,135.58, of which \$75,385.58 is now to be paid by the order this day made and entered in proceeding No. 1915.

Upon consideration whereof, and being fully advised in the premises, the Commission finds, for the purposes of this proceeding:

(1) That the value of said property and assets so to be acquired by the applicant, is not less than the sum of \$327,135.58;

(2) That the issue of applicant's common capital stock of the par value of \$75,400.00 is reasonably required and the money to be procured thereby is necessary for the payment of the initial payment of the consideration for the aforesaid property, to be acquired by the applicant, and

(3) That the date of payment of the balance of said consideration has not been definitely determined and may be as remote as ten years from this date, and that the authorization of the capitalization of said balance of such consideration should be withheld until the payment of the same is imminent.

and is satisfied that consent and authority should now be granted for the issue and disposition of applicant's common capital stock of the par value of \$75,400.00. It is, therefore,

Ordered, That said The Hamilton Service Company be, and hereby it is authorized to issue its common capital stock of the par value of seventy-five thousand, four hundred dollars (\$75,400.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be devoted to and used for the following purpose, and no other, to-wit: The payment of the initial payment of the consideration for the property and assets of The Hamilton Utilities Company, the purchase of which has been duly consented to and authorized by the order this day made and entered in proceeding No. 1915. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the

expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority to issue other capital stock, be, and hereby it is dismissed, without prejudice to any future application which applicant may institute for the capitalization of the payment of the remainder of the consideration of said property, when as the payment of the remainder of such consideration is imminent.

✽

No. 1915—In the Matter of the Joint Application of The Hamilton Utilities Company for Permission to Lease and Sell and The Hamilton Service Company for Permission to Lease and Purchase the Property of the Hamilton Utilities Company at Hamilton, Ohio, Trenton, Ohio, and Overpeck, Ohio, and Supply the Citizens of the City of Hamilton and Vicinity With Gas and Electricity for Light, Heat and Power Purposes. Prayer Granted.

(Dated March 26, 1920.)

This day, after due hearing, notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application of The Hamilton Utilities Company and The Hamilton Service Company, (corporations duly organized and existing under the laws of Ohio), asking the consent and authority of this Commission for the leasing and conditional purchase and sale, by said respective parties, of all the property, rights and assets of said The Hamilton Utilities Company:

Upon consideration whereof and being fully advised in the premises, the Commission finds that the public will, upon said leasing and purchase and sale of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor, and is satisfied that consent and authority for such lease and purchase and sale of said property should be granted. It is, therefore,

Ordered, That said The Hamilton Utilities Company be, and hereby it is authorized to presently lease and sell all of its assets, rights and property to The Hamilton Service Company; and said The Hamilton Service Company hereby is authorized to lease and purchase said property, rights and assets, and to pay, as the consideration therefor upon the consummation of such purchase, the agreed sum of \$327,135.58. It is further

Ordered, That, forthwith upon the consummation of such

lease, the said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to rates and service, or the authorization of the passing of said consideration, be binding upon this Commission in any future proceeding involving the subjects of rates or service.

*
J

No. 1959—In the Matter of the Joint Application of The Pennsylvania-Ohio Electric Company and Sharon and New Castle Railway Company for Authority to Enter Into a Contract for Operation of a Line of Railway of the Sharon and New Castle Railway Company by The Pennsylvania-Ohio Electric Company. Dismissed.

(Dated March 26, 1920.)

This day this matter was submitted upon the joint application of The Pennsylvania-Ohio Electric Company, (a consolidated corporation of Ohio and Pennsylvania, and the owner and operator of certain line of electric interurban railroad, and the Sharon and New Castle Railway Company, (a corporation of Ohio, and also the owner and operator of a certain line of electric interurban railroad extending from a connection with the line of The Pennsylvania-Ohio Electric Company at Hubbard, Ohio, to the State line between the States of Ohio and Pennsylvania, where it connects with a line of the Sharon and New Castle Street Railway Company), asking such consent and authority of this Commission as may be necessary to enable them to make and enter into a contract providing for the operation of the aforesaid line of railroad of the Sharon and New Castle Railway Company by said The Pennsylvania-Ohio Electric Company, and it appearing that the said matter does not require the consent and approval of this Commission, for want of jurisdiction in the premises, it is

Ordered, That said application be, and hereby it is dismissed.

ATTORNEY GENERAL

Where a Minor Under the Age of Eighteen Commits a Delinquency, but no Charge is Filed Until Such Minor Arrives at the Age of Eighteen, the Juvenile Court has no Jurisdiction Over Such Minor. The Same Rule Applies Where Such Minor is Committed to an Institution as a Delinquent, in Such Case the Juvenile Court Cannot Entertain a New Affidavit After the Minor Arrives at the Age of Eighteen—Where an Affidavit Charging Delinquency is Filed in Juvenile Court Against a Minor and Service of a Citation or Warrant is Duly had on Said Minor While He or She is yet Under Eighteen Years,, the Fact that During the Period of Continuance Ordered by the Court, and Before the Court Makes an Adjudication of Delinquency, said Minor Becomes Eighteen Years of Age and Past, Does not Take Away the Court's Jurisdiction to Proceed Against Said Minor as a Juvenile Delinquent Person.—Where an Affidavit is Filed in Juvenile Court, Charging an Adult Person With Inducing and Aiding the Delinquency of a Minor Under the Age of Eighteen Years, Contrary to Section 1654, General Code and Said Minor, Before Said Case is Tried and While the Same is Pending Under an Order of Continuance Granted by the Court, Arrives at the Age of Eighteen, Said Court Does Not, by Reason of That Fact Lose its Jurisdiction Over the Adult Defendant. The Fact That the Minor Arrives at the Age of Eighteen Before an Affidavit is Filed Against the Adult is not Material.

No. 1079—(Opinion Dated March 16, 1920.)

Hon. George S. Adams, Judge of Juvenile Court, Cleveland, Ohio.

Dear Sir: Acknowledgment is made of your letter asking my opinion upon certain questions relative to the jurisdiction of juvenile courts.

(1) Your first question reads as follows:

“A minor under the age of eighteen years, to-wit, of the age of seventeen years, commits an act of delinquency. Before the minor is apprehended he reaches the age of eighteen years. Can the Juvenile Court then assume jurisdiction, per-

mit the filing of an affidavit against him, hear the case against said minor and pass judgment on him?"

The following provisions of the juvenile act are pertinent here:
Section 1642 G. C.:

Such courts * * shall have jurisdiction over and with respect to delinquent, neglected and dependent minors under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing, encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years."

Section 1643 G. C. (108 O. L. 260) :

"When a child under the age of eighteen years comes into the custody of the court, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in cases such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment * * *."

Section 1644 G. C.:

"Delinquent Child Defined. For the purpose of this chapter the words 'Delinquent child' includes any child under eighteen years of age who violates a law of this state, * * *."

Section 1641 G. C.:

"Any person having knowledge of a minor under the age of eighteen years who appear to be either a delinquent, neglected or dependent child, may file with such juvenile court a complaint, sworn to, which may upon information and belief, and for that purpose such complaint shall be sufficiently definite by using the word delinquent, or dependent, as the facts may be."

Section 1648 G. C.:

"Citation, Warrant, Contempt. Upon filing of the complaint, a citation shall issue, requiring such minor to appear, and the parents or guardian or other person, if any, having custody or control of the child or with whom it may be, to appear with the minor at a time and place to be stated in the citation; or the judge may in the first instance, issue a warrant for the arrest of such minor * * *."

Referring to several of the sections just cited, this department in opinion No. 154, addressed to Hon. Charles G. White, Batavia, Ohio, under date of March 31, 1919, said:

"Upon the passage of the juvenile act, of which the above quoted sections are a part, the courts of Ohio were quick to declare that delinquency as defined in that act was not in the nature of a crime; that the act itself, so far as the minor child was concerned, was neither a criminal nor penal one, but reformatory or corrective; and that while the commission of a crime may set the machinery of the juvenile court in motion, the minor proceeded against is not tried by the court as for crime, but for incorrigibility."

In the opinion referred to it was also said that:

"What Section 1642 G. C., above quoted given the juvenile court jurisdiction over, is not offenses committed by juveniles, but jurisdiction 'over and with respect to delinquent, neglected and dependent minors.' The order made by the juvenile court under Section 1652 G. C. is not a finding of guilt, but rather a determination of status. That is, the minor child is found to be in a certain condition which Section 1644 G. C. describes as 'delinquency,' and the effect of the court's order is to make said minor a ward of the court for all necessary purposes of discipline and protection. See Section 1643 G. C."

In my opinion it would not be possible to answer your first question affirmatively, without doing violence to both the letter and spirit of the juvenile act. Such an answer could rest upon no other theory than that the juvenile court's jurisdiction related to offenses; that whenever it could be shown the minor was under eighteen years of age at the time the offense was committed, the jurisdiction of the juvenile court could be asserted over that minor, even though the minor's age, at the time such jurisdiction attached, was not under eighteen years. That such theory is an incorrect one, has already been asserted by the excerpts from the former opinion above referred to.

Furthermore, an affirmative answer to your question would occasion much practical inconvenience in administering the juvenile

act. For instance, how could a person truthfully swear to the complaint provided for by Section 1647 G. C., to the effect that he had "knowledge of a minor under the age of eighteen years who appears to be a delinquent," when the fact was that the affiant knew that such minor at said time was not under the age of eighteen years, but over that age?

Under one circumstance only, does there appear to be any authority in the juvenile court to exercise jurisdiction over a minor who is not under the age of eighteen years. This circumstance is set forth in Section 1643 G. C., above quoted, and relates to the continuing jurisdiction of the court. As the section points out, the jurisdiction originally attaches in respect of a "child under the age of eighteen years" who has come into the custody of the court under the provisions of the juvenile act. The power of the court "over such child" then continues until he or she attains the age of twenty-one years.

In the case with which we are now dealing, it appears that no step has been taken by the juvenile court to exert its jurisdiction over the child until said child is no longer under the age of eighteen years. It must therefore be concluded that in such case the juvenile court is without jurisdiction to entertain an affidavit against the child, and cannot adjudicate the question of such child's delinquency. That is to say, your first question is answered in the negative.

(2) Your second question reads thus:

"A minor under the age of eighteen years, to wit, of the age of seventeen years, commits an act of delinquency. The minor is brought before the court and is adjudged a delinquent, made a ward of the court, and committed to an institution. While in the institution said minor becomes eighteen years of age and he then confesses to committing an act of delinquency made by him while still seventeen years of age. Can this court entertain a new affidavit against him and make a further order as to said minor? (Having in mind Section 1643 General Code of Ohio.)"

There are several things to be considered in respect of this question, first, the significance of the fact that the minor against whom any new affidavit is filed is, at the time of such filing, an inmate of an institution. Section 1642 G. C., it will be noticed, says that courts therein named shall have jurisdiction.

"over and with respect to * * * minors * * * not inmates of a state institution or any institution incorporated under the

laws of the state for the care and correction of delinquent, neglected and dependent children * * *."

So that if your query, using the word "institution," means an institution of the kind mentioned by the foregoing provision of Section 1642 G. C., your question would require a negative answer for that reason.

It may be claimed, however, and we suppose this is the real point of the question, that while as a general rule an affidavit charging delinquency under the juvenile act cannot be filed against any but minors under the age of eighteen years, yet there is this exception to the rule: That where such minor has once been declared a delinquent and has been placed under the continuing jurisdiction of the juvenile court, that jurisdiction is broad enough to allow the court to entertain new affidavits against the minor at any time prior to the time said minor becomes twenty-one years of age. That your question is suggested by such a theory appears from your reference to Section 1643 G. C., which, as we have seen, is the section authorizing the continuing jurisdiction of the juvenile court.

In my opinion, Section 1643 G. C. is not open to the construction just suggested. The purpose of that section was to cause the minor to retain, past the ordinary juvenile age, the status which had been theretofore given him "for necessary purposes of discipline and protection." As said above, the juvenile proceeding is not a criminal one. There is no intention to punish the minor, but only to provide "proper guardianship" for the child. Section 1683 G. C.

Another thing to be considered in respect of this question is the anomaly which would be occasioned by a proceeding to declare a delinquent, one who already possesses that status by an adjudication of the juvenile court.

(3) Your third question is this

"A minor of the age of seventeen years commits an act of delinquency and he is 'induced and aided' by an adult. Affidavits are filed and the minor is apprehended and the defendant arrested. The defendant asks for a continuance of his case, to which he is entitled, and said case is continued, say, for one month. In the meantime the minor arrives at the age of eighteen years. Does the court lose its jurisdiction over the minor and the defendant, or either of them, or can it proceed to hear the case when the continuance asked for expires?"

There are really two parts to this question: (a) As to the jurisdiction of the court over the minor; and (b) As to the jurisdiction

of the court over the inducer and aider, who is an adult. It will be found convenient to consider these two situations separately.

(a) As to the jurisdiction of the court over the minor :

“When a child under the age of eighteen years comes into the custody of the court,” says Section 1643 G. C., “such child shall continue for all necessary purposes of discipline and protection a ward of the court, until he or she attain the age of twenty-one years. * * * .”

From your statement of facts it would seem that the minor referred to has, while under the age of eighteen years, come into the custody of the court, for it is stated that while the minor is yet seventeen years of age and affidavit is filed and said minor apprehended, that is, brought within the jurisdiction of the court by one of the ways provided by Section 1648 G. C., to-wit, by service of citation or by service of warrant. That jurisdiction acquired while the minor was under the age of eighteen years would, by reason of the provisions of Section 1643 G. C., continue for all necessary purposes of discipline and protection until said minor attained the age of twenty-one years; unless, of course, the court did not make any adjudication of delinquency. In the latter case, the court's jurisdiction would terminate at the moment the court found that said minor was not a delinquent child.

The conclusion is therefore reached that where an affidavit charging delinquency is filed in juvenile court against a minor, and service of a citation or warrant is duly had on said minor while he or she is yet under the age of eighteen years, the fact that during the period of a continuance ordered by the court, and before the court makes an adjudication of delinquency, said minor becomes eighteen years of age and past, does not take away the court's jurisdiction to proceed against said minor as a juvenile delinquent person.

It is realized that the question just considered is not free from doubt. However, in the absence of any court decision contra, we feel that the rule just announced is a proper administrative rule to be followed, the same being consistent with the liberal construction which Section 1683 G. C. requires to be given the juvenile act.

(b) It now remains for us to consider whether, under the facts of your third question, the juvenile court loses its jurisdiction over the adult person charged with inducing and aiding the delinquency of said minor.

Section 1654 G. C., upon whose provisions the affidavit against the aider and inducer is based, says

"Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, or acts in a way tending to cause delinquency in such minor, shall be fined not less than ten dollars, nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both. Each day such contribution to such dependency, neglect or delinquency, shall be deemed a separate offense. If in his judgment it is for the best offense. If in his judgment it is for the best interest of a delinquent minor, under the age of eighteen years, the judge may impose a fine upon such delinquent not exceeding ten dollars, and he may order such person to stand committed until fined and costs are paid."

It will be observed that said section defines a crime, to-wit, a misdemeanor. *State v. Ross*, 89, O. S. 383. So that, as regards the aider and inducer, the proceedings of the juvenile court are not reformatory or corrective, but criminal. *State v. Dunn*, 53, Ore. 304. The problem is to be solved, therefore, by references to the rules of criminal procedure.

If the defendant were being tried upon an indictment charging rape of a female person under the age of sixteen years, with her consent (Section 12414 G. C.), the inquiry upon the subject of the female person's age would be, not how old she was at the time of the trial, but how old she was at the time of the commission of the offense charged. The state would be required to allege in the indictment and prove at the trial that at the time the offense was committed the female person was under the age of sixteen years. It would be no defense for the defendant to show that at the time of the trial such female was not under sixteen years of age. In other words, under the law of crimes, where age is one of the ingredients of an offense, it is age as of the time when that offense was committed.

When, therefore, Section 1654 G. C., speaks of the abusing, or of aiding or contributing toward delinquency of a minor under the age of eighteen years, what is meant is the minor's age at the time of the alleged abuse of the contribution toward delinquency.

In *Willison v. State*, 3 O. A. R. 244, decided June 9, 1914, the syllabus says

"In a prosecution for contributing to the delinquency of a minor, the affidavit, in order to charge a crime, must allege

that the minor is under eighteen years of age and is a delinquent within the meaning of the statute, and that the defendant is guilty of contributing to such delinquency."

At p. 245 of the opinion the court says:

"Section 1644, General Code, as found in 103 Ohio Laws, at page 869, defines the words 'delinquent child' and specifies the acts that constitute any minor under the age of eighteen years a delinquent. There are a number of specifications in this section, which, when applied to such minor, constitute him a delinquent within the meaning of the statute.

The affidavit, in order to set out a crime, should not only charge that the party against whom the affidavit is filed was violating some one of the criminal statutes of the state in contributing to such delinquency, but it should charge also that such child was delinquent and specify the particulars in which such delinquency exists."

In the light of the above quotations, it appears the statement in said syllabus, that the minor must be a delinquent, does not mean the minor must have been adjudged a delinquent by the juvenile court. If that were true, all prosecutions against persons for contributing to the delinquency of a minor would have to be held in abeyance until the juvenile court had, in a separate proceeding, first determined said minor to be a delinquent. Such a construction would greatly impair the workability of the juvenile law and is one which has never been judicially sanctioned, so far as I am informed.

You are therefore advised that where an affidavit is filed in juvenile court, charging an adult person with inducing and aiding the delinquency of a minor under the age of eighteen years, contrary to Section 1654 G. C., and said minor, before said case is tried and while the same is pending under an order of continuance granted by the court, arrives at the age of eighteen years, said court does not, by reason of that fact, lose its jurisdiction over the adult defendant.

(4) Your fourth question reads thus:

"A minor having been made a ward of this court, and while confined in an institution arrives at the age of eighteen years. He then confesses to another act of delinquency committed before his eighteenth birthday, implicating an adult person who 'induced and aided' him to commit the offense. Can this court entertain a new affidavit against said ward, now eighteen years of age, and cause the filing of an affidavit against the adult who 'aided and induced' and try said adult for contributing to said minor's delinquency?"

Inasmuch as you say that the minor confesses to "another" act of delinquency, it is assumed that in the situation which you have in mind the minor has been adjudged a delinquent and committed as such. The situation then is, in so far as the minor is concerned, the same as the situation put by your second question. I shall not repeat what was said there, but will simply advise that under the facts of your fourth question the juvenile court is without authority to entertain a new affidavit against said minor, now eighteen years of age.

The other element of your question has to do with an adult person who induces and aids a minor to commit an offense; that is, to become a delinquent, at a time when said minor is under the age of eighteen years of age. This same situation was passed upon connection with your third question, with this difference: Under your third question the fact was that the minor was under the age of eighteen years at the time of the affidavit charging contribution to delinquency was filed against the adult; whereas, we are now dealing with a case where the minor is assumed to be over the age of eighteen years at the time of the filing of the affidavit against the adult.

This difference in fact is not material here, however. In prosecution for contributing to a minor's delinquency, the important inquiry is not, how old was the minor when the affidavit was filed, but how old was the minor at the time when it is charged he or she was delinquent.

In other words, it is considered that an answer has already been given herein (namely in connection with your third question) to that part of your fourth question which deals with the adult "aider and inducer."

Specifically answering your fourth question, you are advised that in the case stated the juvenile court has authority to entertain an affidavit against the adult who "aided and induced" said minor to become delinquent, and may try said adult for contributing to said minor's delinquency.

When a Publisher of School Books, Desiring to Offer the Same for Use by Pupils in the Common Schools of Ohio, Files in the Office of the Superintendent of Public Instruction a Copy of Such Book or Books, Together with the Published List Price Thereof and the Commission, Consisting of the Governor, Secretary of State and Superintendent of Public Instruction, Fixes the Maximum Price (Not Exceeding Seventy-five Per Cent. of Such List Price) at Which Such Book or Books May Be Sold to or Purchased by Boards of Education; and if After Notice of Such Price, Such Publisher Notifies the Superintendent in Writing that he Accepts Such Price and Agrees in Writing to Furnish Such Book or Books During a Period of Five Years at That Price, Such Proceedings Constitute a Contract Between Such Publisher and the Commission for the Benefit of Boards of Education of the State, Whereby Such Publisher Becomes Bound to Furnish Such Book or Books to Boards of Education for the Full Period of Five Years From the Date of Such Written Notice and Agreement, at a Price Not Exceeding That so Fixed by the Commission and Accepted by Such Publisher.—Boards of Education are Limited in Their Selection of Books to be Used in the Public Schools of This State to the Books so Filed With Said Commission, but Books so Selected and Adopted Must be Adopted for a Period of Five Years, Subject to the Right to Change Such Adoption by the Consent, at a Regular Meeting of Five-sixths of the Members Thereof.—It is the Duty of Boards of Education Before Adopting any of Such Books to Make an Effort to Secure From Such Publishers the Desired Books at Less Than the Maximum so Fixed by the Commission.—Within the Period of Five Years From His Acceptance of a Maximum Price Fixed by the Commission for any Book a Publisher Thereof May not Refile the Same Book With the Superintendent of Public Instructions and Have a Higher Maximum Price Fixed Therefor.

No. 1068—(Opinion Dated March 12, 1920.)

Hon. Frank B. Pearson, Superintendent of Public Instruction,
Columbus, Ohio.

Dear sir: Acknowledgment is made of the receipt of your letter which reads as follows:

“At a meeting of the State Text Book Commission, it was agreed by unanimous consent to ask you to review the opinions handed down by your predecessor relating to the listing of text books in Ohio. As Secretary of this Commission, I am apprised

ing you of this action, and hope it will be your pleasure to make this review."

Pursuant to the above request, I have made a careful review of the opinions of my predecessor therein referred to, and have diligently considered the briefs and contentions of various interested parties.

After such review and consideration, I am convinced that the conclusion of my predecessor, as stated in his said opinions, is correct, and the doctrine of those opinions is adhered to and hereby affirmed.

In view of this conclusion, I take it that an extended discussion of the opinions and of the statutes and contentions would not be interesting.

However I have been persuaded by the history of the legislation itself, by the practical construction placed upon these provisions by the department having their enforcement in charge and by all other interested parties prior to the date of the opinions, and by the acquiescence of such parties in the doctrine of the opinions since their rendition, until it might be said that from the time of the enactment of the legislation the doctrine of these opinions has become the settled rule of construction.

So far as I have been advised, no hardships have resulted from that construction, and particularly is this true as applied to the people of the state, the result having been to stabilize the price of text books used in our public schools for a definite period of five years.

Much that has been said in opposition to the construction aforesaid might be potent argument to the legislature to induce a change in the law; but it is our duty to construe and enforce the law as we find it.

The difference of opinion as to the proper construction of Section 7710 G. C. appears to be of recent origin, and grows out of the fact that two "five-year periods" are referred to; one in Section 7710 G. C. the other in Section 7713 G. C. In my judgment, there is no necessary connection between the two.

The "five years" mentioned in Section 7710 refers to the period during which the publisher of a given text book agrees with the State Text Book Commission to furnish the book at a given price, the immediate parties being the commission and the publisher, but the agreement made being for the benefit of the third parties, to-wit, boards of education of this state.

By Section 7714 G. C. such boards are authorized to contract direct with publishers, if they can, for a less price than the maximum agreed upon between such publisher and the Text Book Commission. If unable to procure a less price, then the boards simply operate under the contract made for their benefit by the commission.

Forerunners of this section (4020 and 4022-2 R. S.) carry the words "for the period of five years from the date of such acceptance." The codifying commission disposed of Sections 4020-1 to 4020-9 R. S. by stating that they were repealed by implication by Senate Bill 249, 92 O. L. 282, the title of which is "An Act to provide for supplying the schools of Ohio with good and sufficient school books at the lowest possible prices." This act became Sections 4020-10 to 4020-14 R. S., and carried into the Code as Sections 7709 to 7718.

If the purpose of the legislature was, as stated, to procure books at the lowest possible prices, how can it be said that that object may be accomplished if after providing for a fixed price for five years, a construction may be had which will permit a refile of the same book each year at an increased price? I cannot think such a construction was ever contemplated by the legislators who were seeking to obtain books at the lowest possible price, and who created a text book commission to guard the rights of the people in that respect.

The other "five years" mentioned in Section 7713 G. C. is a limitation directed against boards of education, to the end that there may not be frequent changes of text books with a consequent expense to the people, but at the same time providing a method of changing a text book should become necessary, by the votes of five-sixths of all the members of such boards.

Without extending this discussion, it is the opinion of the Attorney General that

(1) When a publisher of school books, desiring to offer the same for use by pupils in the common schools of Ohio, files in the office of the Superintendent of Public Instruction a copy of such book or books, together with the published list price thereof, and the Commission, consisting of the Governor, Secretary of State and Superintendent of Public Instruction, fixes the maximum price (not exceeding seventy-five per cent. of such list price) at which such book or books may be sold to or purchased by boards of education; and if after notice of such price, such publisher notifies the superintendent in writing that he accepts such price, and

agrees in writing to furnish such book or books during a period of five years at that price, such proceedings constitute a contract between such publisher and the Commission for the benefit of the boards of education of the state, whereby such publisher becomes bound to furnish such book or books to boards of education for the full period of five years from the date of such written notice and agreement, at a price not exceeding that so fixed by the Commission and accepted by such publisher.

(2) Boards of education are limited in their selection of books to be used in the public schools of this state to the books so filed with said Commission, but books so selected and adopted must be adopted for a period of five years, subject to the right to change such adoption by the consent, at a regular meeting of five-sixths of the members thereof.

(3) It is the duty of boards of education before adopting any of such books to make an effort to secure from such publishers the desired books at less than the maximum so fixed by the Commission.

(4) Within the period of five years from his acceptance of a maximum price fixed by the Commission for any book, a publisher thereof may not refile the same book with the Superintendent of Public Instruction and have a higher maximum price fixed therefor.

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The State Highway Commissioner Cannot Improve a Main Market Road by Letting a Contract on the Basis of "Cost Plus." Where the Highway Commissioner Improves a Main Market Road by Force Account, it is Compulsory to Assess at Least Ten Per Cent. of the Cost Upon Property Owners... The Highway Commissioner Cannot Execute Part of an Improvement Without the Co-operation of County, Township or Village and Leave the Remainder to be Carried out Upon the Usual Plan of Co-operation by the State with County, Township or Village.

No. 1084—(Opinion Dated March 17, 1920.)

Hon. A. R. Taylor, State Highway Commissioner, Columbus, Ohio.

Dear Sir: Your letter of recent date is received, reading as follows:

"In order to carry out the policy of constructing through roads, it may be necessary for the Highway Department to assume the initiative and improve certain gaps in the Main

Market roads without receiving co-operation from counties or townships.

I have in mind I. C. H. No. 24, M. M. No. 111, leading from Columbus to Cleveland. I am desirous of completing the grading and bridging of this highway during the present year. The major part of the highway will be improved this year with the exception of a portion in Knox, Ashland and Holmes Counties. If the Department has authority to grade and bridge the portions in the respective counties without county or township co-operation, it will hasten the early completion of a through road between the two industrial centers,—Cleveland and Columbus. The object in proceeding in this manner is to use State highway equipment insofar as available and also prison labor which may be secured at about \$2.50 per day.

Has the Commissioner authority under Section 1231 of the General Code to let contract at cost plus or proceed by force account to improve main market road? If so, would it be compulsory to assess at least ten per cent. of the cost upon property holders?"

Said Section 1231 G. C. (107 O. L. 137) to which you make reference, reads as follows:

"The state highway commissioner, subject to the provisions of this act, shall have power to purchase such equipment and materials and employ such labor as may be deemed necessary to execute any work upon said main market roads, he may let contracts for the execution of any work upon said roads. The state highway commissioner is hereby authorized to sell either at private sale, or at public sale after such notice as he may deem proper, any machinery, tools or equipment that through wear have become unfit for use. The proceeds of such sale shall be paid into the state treasury to the credit of the state highway improvement fund. The state highway commissioner is also authorized to exchange such machinery, tools and equipment for new equipment and pay the balance of the cost of such new equipment from any funds available for that purpose. When contracts are let for the construction of main market roads, the provisions of this chapter relating to the letting of contracts for inter-county roads shall apply in all respects to letting contracts for such main market roads. County commissioner, township trustees and village councils shall have the same power and authority to co-operate in the construction, improvement, maintenance and repair of main market roads as is granted to them by this act in the construction, improvement, maintenance and repair of inter-county highways; and in case the commissioners of any county, the trustees of any township and the council of any village, or any of such

authorities , determine to co-operate in the construction, improvement, maintenance or repair of any main market road, the procedure shall be the same as in the case of co-operation by such authorities, in the construction, improvement, maintenance and repair of inter-county highways, as provided in this act. The funds appropriated or available for main market roads shall be used in carrying out the provisions of this section."

Said section was, among others, considered in an opinion of this department of date August 16, 1917, Opinions of Attorney General for 1917, Vol. II, p. 1547. The conclusion therein reached was that by virtue of said section the State Highway Commissioner might, in the construction and improvement of main market roads, proceed under force account. The statement was made in the course of the opinion that if the State Highway Commissioner proceeded upon force account, he might not avail himself of the aid of counties, townships or villages in the improvement of main market roads,—the basis of said statement being the sentence of said Section 1231 which reads as follows:

"County commissioners, township trustees and village councils shall have the same power and authority to co-operate in the construction, improvement, maintenance and repair of main market roads as is granted to them by this act in the construction, improvement, maintenance and repair of inter-county highways; and in case the commissioners of any county, the trustees of any township and the council of any village, or any of such authorities, determine to co-operate in the construction, improvement, maintenance and repair of any main market road, the procedure shall be the same as in the case of co-operation by such authorities, in the construction, improvement, maintenance and repair of inter-county highways, as is provided in this act."

The conclusion reached in said opinion is plainly in accord with the terms of said Section 1231.

You are therefore advised that you have authority under Section 1231 to construct and improve main market roads by force account,—that is to say, you have the power to purchase such equipment and material and employ such labor you may deem necessary to execute construction and improvement work upon main market roads. In proceeding in this manner you cannot avail yourself of the aid of counties, townships and villages.

You also inquire whether you may improve a main market

road by letting "contract at cost plus." The answer to this inquiry is in the negative. The only form of contract authorized by said Section 1231 is that covered by the sentence,

"When contracts are let for the construction of main market roads, the provisions of this chapter relating to the letting of contracts for inter-county roads shall apply in all respects to letting of contracts for such main market roads."

It should be noted here that said Section 1231 does not contain the broad terms of that part of Section 1191 (107 O. L. 121) which relates to construction, improvment, maintenace and repair work upon inter-county highways when the State Highway Commissioner proceeds upon his own initiative after the failure of the county or township to apply for state aid on or before a specified date. In that case the State Highway Commissioner may proceed "either by contract, force account or in such manner as the state highway commissioner may deem for the best interests of the public."

Language practically indential with that just quoted is found in Section 1209 in its form as appearing 107 O. L. 126, relating to the manner of completing work by State Highway Commissioner when the original contractor abandons his contract, etc.

Lack of similar broad provisions in Section 1231 but serves to emphasize the fact that if the State Highway Commissioner does not proceed upon "force account" as above defined, his only alternative is to resort to a contract upon the plan of competitive bids as in the case of improvement of inter-county highways with state aid.

You also ask whether in case you proceed to improve a main market road by force account, it will be compulsory to assess at least ten per cent. of the cost upon property holders. The answer is in the affirmative. Section 1191 G. C. contains, among other provisions, the following:

"When a part of the inter-county highway system or main market road system of the state is improved by the state, by contract or force account, without the co-operation with a county or some township thereof, ten per cent. of the cost of said construction or improvement shall be assessed against the land abutting therein according to the benefits provided the total amount assessed against any abutting property shall not exceed thirty-three per cent. of the valuation of such abutting property for the purpose of taxation."

The provision just quoted is followed by others outlining the procedure to be followed by the State Highway Commissioner in making the assessment.

The statements above made sufficiently answer your inquiries in the form in which they are submitted. However, personal conferences at your department have disclosed that you have had in mind whether you were authorized to arrange the construction work on a given section of main market road so that you might execute part thereof (as, for instance, the grading and building of bridges) without the co-operation of county, township or village, and leave the remainder, such as foundation and paving, to be carried out upon the usual plan of co-operation by the state with county, township or village.

You are advised that said Section 1231 does not authorize such procedure. Read literally, the section might be supposed to furnish such authority; but we recur to those provisions of Section 1191, as above quoted, we find that an assessment must be made, based upon the "cost of said construction or improvement." It is evident that no practicable plan is available whereby an assessment may be calculated if part of the work is done by the State Highway Department without co-operation of county, etc., and part of it as a consequence of separate proceedings initiated by county commissioners for state aid. Furthermore, in the one case, the assessment is to be made by the State Highway Commissioner (Section 1191) and in the other case by county commissioner (Section 1214.) In fact, the two plans are so entirely different in all their aspects that there is no way of reconciling them. Under these circumstances, Section 1231 must be taken as meaning that if the State Highway Commissioner sees fit to undertake the construction and improvement of a section of main market road without the co-operation of county, township or village, he must bring the section to completion without such local co-operation, and must make the assessment at the percentage and in the manner pointed out in Section 1191.

SUPREME COURT

The Royal Indemnity Co. v. Tre Northern Ohio Granite & Stone Company

Suretyship—Construction of Contract—Ambiguous Terms—Contractor's Bond—Default by Principal Contractor—Materialmen and Laborers—Surety Liable to Subcontractors, when.

1. The rule of strict construction ordinarily applied in favor of private, voluntary sureties does not apply to that class of sureties which, for a pecuniary consideration, undertakes to indemnify an owner of a construction against the defaults of the principal contractor who engages to furnish labor and materials for the construction. In such contracts, where ambiguous terms are employed, that construction should be adopted, if consistent with the purpose to be accomplished, most favorable to the beneficiary.
2. A surety of the character described, which, by its contract, assures the faithful performance thereof by a principal who agrees to furnish labor and materials on a structure, at his own risk, cost and expense, is liable to a material man who furnishes materials, in default of the principal's payment therefore. (Cleveland Metal Roofing & Ceiling Co. vs. Gaspard et al. 89 Ohio St., 185, overruled.)

(No. 16270—Decided December 9, 1919.)

Error to the Court of Appeals of Cuyahoga county.

This was a suit brought against the surety on a contractor's bond. On August 18, 1915, one Edward A. Weiland entered into a contract with the city of Cleveland, under the terms of which he agreed to build a reinforced concrete floor for a viaduct in that city. One of the terms of his contract was that he would "at his own risk, cost and expense do all work and furnish materials, labor, tools, appliances, ways and means" in building the concrete floor on the viaduct, under a contract made between it and said Weiland gave a bond with the plaintiff in error, The Royal Indemnity Company of New York, as surety. By the terms of this bond it was provided that said Edward A. Weiland should "well and truly execute all and singular the stipulations by him to be executed * * * and do and perform all and singular the terms, conditions and requirements of the plans, specifications and contract * * * and should further indemnify and save harmless said The City of Cleveland from all liens, charges, claims, demands, loss, costs and damages of every kind and nature whatsoever, including claims for material and labor furnished and performed for and upon the work specified in said agreement."

After the execution and delivery of said contract and bond The Northern Ohio Granite & Stone Company performed labor and fur-

nished material for the erection of the reinforced concrete flooring on the viaduct, under a contract made between it and said Weiland.

Upon the failure of Weiland to pay for the labor and material The Northern Ohio Granite & Stone Company brought suit for the amount due, and asked judgment therefor.

These facts were alleged in the second amended petition of plaintiff. The Northern Ohio Granite & Stone Company, to which the defendant surety company interposed a general demurrer. This demurrer was sustained by the trial court, and judgment entered thereon. The court of appeals reversed this judgment whereupon error was prosecuted to this court.

Messrs. Orgill, Maschke and Mellen, for plaintiff in error.

Messrs. Griswold, Green, Palmer and Hadden, for defendant in error.

Jones, J. The Northern Ohio Granite & Stone Company is not specifically named as an obligee in the bond. However, it could maintain an action as a party in interest under our code if the terms of the bond inured to it as a beneficiary thereunder. The contract not only became a part of the bond, by the latter's requirement that it should be faithfully performed, but was made a part of the bond in the specific terms, "as if fully set forth," therein. Among the terms of the contract required to be faithfully performed by this bond was the one that required Weiland "at his own risk, cost and expense" to do all the work and furnish all the material for the reinforced concrete floor of the viaduct.

Did this engagement between the city and the surety reasonably contemplate the promise to pay upon the part of Weiland for the labor and materials entering into the superstructure? At the threshold of this case we are confronted with the rule announced in *Cleveland Metal Roofing & Ceiling Co., vs. Gaspard et al.*, 89 Ohio St., 185. We do not deem it now necessary to enter upon a discussion of the principle there announced than to say that we are fully in accord with that line of decisions which upholds liability upon the part of surety for the payment of material and labor furnished under a stipulation in a bond guaranteeing the payment of claims for material and labor required in the construction of the building. Not only does the current of modern authority support this view, but it is flanked by a sound legal reason. We are utterly unable to see why a case of such character a court should be required to adopt a construction that would nullify not only the specific provision of the bond itself but the evident intention of the

parties thereto. By the terms of that bond those who furnish material and labor became beneficiaries thereunder. Nor is the principle announced in the Gaspard case in harmony with two unreported cases decided by this court, viz.: *Henry et al. v. Ankrim* 39 W. L. B., 78, affirmed by the supreme court without opinion 57 Ohio St., 665, and *American Surety Co. of New York v. Raeder*, 15 C. C., 47, affirmed by the supreme court without opinion, 61 Ohio St., 661. We therefore, disapprove the principle announced in the Gaspard case, *supra*.

The earlier rule of *strictissimi juris* adopted for the protection of sureties should not apply to cases of this character. "The early adjudications in suretyship treated the contract as one of great burden to the promisor, because of the fact that it was usually entered into for accomodation merely, and without any participation in the benefits of the principal contract." (Stearns on Suretyships[2 ed.], Section 2.) Where contracts for improvements are entered into between an owner and a surety who receives a premium for its engagement of fidelity, terms may be employed which fairly contemplate the financial protection of subcontractors who employ labor and furnish material for the structure contemplated in the bond. That labor and materialmen may eventually perfect liens against a structure would be sufficient consideration for immunity of the owner upon the part of the surety.

While under our statute our mechanic's lien law may not have provided for liens on this particular structure, because of its public nature, the city, in this case, knowing that fact, may have had in contemplation the protection of mechanics and materialmen who could not obtain a valid lien upon this structure. Unlike an ordinary private surety, a surety of the character here involved, which accepts money consideration, has the power to and does fix the amount of its premium so as to cover its financial responsibility. This class of suretyships, therefore, is not regarded as "a favorite of the law." (*Bryant v. The American Bonding Co.*, 77 Ohio St., 90, 99.) And if the terms of the surety contract are susceptible of two constructions, that one should be adopted, if consistent with the purpose to be accomplished, which is most favorable to the beneficiary. (*Supreme Council Catholic Knights vs. Fidelity & Casualty Co.*, 63 Fed. Rep., 48, 58; *American Surety Co. v. Pauly*, 170 U. S., 133; *Cowles v. U. S. Fidelity & Guaranty Co.*, 32 Wash., 120, and *Mechanics' Savings Bank & Trust Co. v. Guarantee Co.*, 68 Fed Rep., 459.) Especially is this so when the contract of

suretyship employs ambiguous terms relating to those furnishing labor and material which enter into the structure.

In this situation, therefore, taking both the bond and the contract into consideration, and giving to the terms of the bond a reasonable construction, can it be said that the parties thereto contemplated the purpose of payment for the labor and material that entered into this structure? If Weiland by his contract had merely engaged to "furnish" or to "provide" materials and labor in conformity to his contract, it could reasonably be claimed that payment to the materialmen was not comprehended with such terms. But his contract provides more than that. It provides that he shall furnish those materials at his own expense. There is some ambiguity in the employment of this clause. There was no necessity for the employment of these words for the protection of the city, because it was already protected by another term of the bond, which provided that the city should be saved harmless from all claims and demands against it. These words must, therefore, have been used for a definite purpose. Although Weiland engaged to furnish these materials at his own cost and expense this obligation of the bond was broken, for the materials furnished were furnished at another's cost and expense. This construction of a contract of similar character was upheld in the case of *Fuller & Co. v. Alturas School District et al.*, 28 Cal. App., 609. However, in a similar case a different construction was upheld in *Greenfield Lumber & Ice Co. v. Parker et al.*, 159 Ind. 571.

The principle here announced is supported by the case of *Lyman v. City of Lincoln et al.*, 38 Neb., 794. There the contract provided that receipts for claims for labor and material should be filed with the board of public works before the financial estimate was paid and work accepted. It is there held that such clause in the contract constituted a promise to pay for labor and material furnished on the contract.

The disposition of this feature of the case renders unnecessary the consideration of other alleged errors presented.

The judgment of court of appeals reversing the judgment of the common pleas court is affirmed and the case is remanded to the latter with instructions to overrule the demurrer to the second amended petition.

Judgment affirmed.

Nichols, C. J., Matthias, Johnson and Wanamaker, JJ., concur.
Merrell, J., not participating.

MOTION DOCKET

10350. Elmer Schnable, by etc., v. The C. C. C. & St. L. Ry. Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

10351. Hotel Statler Co., Inc., v. Morris Safier. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

10402. William P. Burke v. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Clarke county. Overruled.

10418. The Miami Conservancy District v. Joseph A. Shade, et al. Motion for an order directing the Court of Appeals of Greene county to certify its record. Overruled.

10426. D. S. Snider, Exr., v. T. L. Rollins. Motion by plaintiff to dispense with printing exhibits in cause No. 16516 on the general docket. Sustained.

10427. The City of Xenia v. H. E. Schmidt. Motion by plaintiff for 30 days extension of time to file brief in cause No. 16532 on the general docket. Sustained.

10430. Industrial Commission of Ohio v. Earnest Weigandt. Motion for an order directing the Court of Appeals of Shelby county to certify its record. Sustained.

10431. H. B. Steward, et al., v. J. W. Barry, Admr. Motion for an order directing the Court of Appeals of Morrow county to certify its record. Sustained.

10429. The State of Ohio v. Scott M. Rowan. Motion for an order directing the Court of Appeals of Jefferson county to certify its record. Overruled.

GENERAL DOCKET

16243. Van Jackson v. The State of Ohio. Hamilton. Judgment reversed.

16244. The C. C. C. & St. L. Ry. Co., et al v. Mills Brothers. Franklin. Judgment affirmed.

16371. Luther M. Neamith v. The State of Ohio. Wood. Judgment affirmed.

16378. Pennsylvania Co., v. Michael Hart. Cuyahoga. Judgment reversed.

16394. E. J. Foster v. Scottish Union and National Insurance Co. Cuyahoga. Judgment of Court of Appeals reversed and that of Common Pleas affirmed.

16411. Josephine Leis v. The Cleveland Railway Co. Cuyahoga. Judgment of the Court of Appeals reversed and that of Common Pleas affirmed.

SECRETARY OF STATE

NEW CORPORATIONS

The Phoenix Building Co., Cleveland, \$50,000. H. E. Bollinger, A. Novotny, C. W. Schaefer, F. A. Lennie, E. P. Moffatt.

The Roundhead Oil and Gas Co., Roundhead, \$20,000. L. R. Neville, A. J. Fleece, J. Roberts, J. V. Hill, W. P. Smith.

The Cuyahoga Falls Masonic Temple Co., Cuyahoga Falls, \$10,000. C. D. Crumb, F. R. Steele, W. Haines, F. Treat, A. P. Land.

The Quilling-Brock Co. (Dairy Prod.), Piqua, \$60,000. A. Quilling, L. E. Brock, F. B. Arnold, O. Quilling, J. Brock.

The Foodserv Machine Co., Cleveland, \$150,000. O. J. Zinner, A. W. Haiman, E. M. Chaloupka, H. L. Taylor, F. C. Russell.

The Coal Service Co., Cincinnati, \$25,000. J. W. Touhy, W. J. Mulvihill, F. C. Rosche, J. W. Couray, W. J. Overbeck.

The Non-Ferro Foundry and Pattern Co., Toledo, \$10,000. R. Eppich, H. J. Badhorn, F. G. Simon, J. Hutter, A. J. Rellinger.

The Electric Vaporizing Nozzle Co., Toledo, \$15,000. A. C. Ash, W. C. Easton, E. F. Powley, A. W. Griffin, B. B. Grantham.

The Queen Shoals Collieries Co., Columbus, \$150,000. D. H. Armstrong, Wm. A. Lama, E. B. Hughes, M. R. Weltner, R. M. Snetzer.

The Malco Tire and Rubber Co., Akron, \$2,000. W. E. Slabaugh, F. Seiberling, R. Guinther, E. Hamlen, R. Brannan.

The Lux Electric Fixture & Art Manufacturing Co., Cleveland, \$25,000. S. N. Weitz, M. J. Grossman, H. Pott, I. M. Ross, F. B. Fishman.

The R. G. Palmer Co. (Dairy Products), Cleveland, \$10,000. L. H. Wieber, J. C. Reasure, L. B. Spanner, F. H. Dettelbach, J. Engel.

The Millbrook Building Co., New Boston, \$20,000. W. H. Caster, H. T. Ribble, J. C. Grandison, R. R. Baldrige, W. O. Gilet.

The National Furnace and Stove Co., Akron, \$350,000. H. H. Montis, G. Heinicke, C. C. Earnest, V. W. Geager, R. E. Kinnear.

The Consolidated Sales and Contracting Co., Toledo, \$10,000. J. M. Browning, F. E. Browning, J. L. Epler, S. B. Epler, C. E. Smith.

The Castle Sales and Specialty Co., Akron, \$5,000. G. C. Castle, E. S. Sheck, V. Warner, H. B. Harris, O. C. Castle.

The Springfield Floral and Fern Co., Springfield, \$15,000. W. S. MacKenzie, L. R. Niles, M. L. MacKenzie, M. S. Niles, R. L. Mills.

The Dayton Industrial Service Co., Dayton, \$27,500. H. C. Muhlenberg, J. B. Johnson, R. L. Hankinson, J. A. Campbell, I. I. Hauer.

The Medina Amusement Co., Medina, \$25,000. S. L. Funk, F. A. Snyder, D. H. Steingas, F. P. Bagley, D. W. Warner.

The Tallmadge Athletic Club Co., Tallmadge, \$2,500. C. H. Wright, F. R. Harrison, I. I. Morrison, R. A. Delamater, F. T. Lahey.

The Wayne Commercial Co., Orrville, \$10,000 (grocery). F. K. Pugh, F. L. Strauss, B. A. Boyd, F. Reichenbaugh, W. E. Snucker.

The Arnold Tool Manufacturing Co., Dayton, \$20,000. J. T. Arnold, T. Lowry, V. E. Rice, B. Kleimeier, W. F. Lee.

The Master Electric Co., Dayton, \$50,000. E. P. Larsh, S. A. Brown, A. C. Jackson, R. G. Corwin, J. H. Larsh.

The East Akron Produce Co., East Akron, \$8,000 (Butter-Eggs). J. S. Reeves, L. S. Reeves, J. B. Solomon, E. E. Solomon, E. S. Reeves.

The T. & H. Service Co., Cincinnati, \$20,000. (Repair Autos) W. Henck, P. C. Henck, L. C. Thompson, E. Meyerose, F. A. Hoover.

The Oberle Tool and Die Manufacturing Co., Toledo, \$25,000. G. L. Oberle, A. J. Johnson, A. L. Johnson, B. T. Conlisk, W. J. Dean.

The Fidelity Grange Co. (Gen. Merchandise), West Milton, \$5,000. H. H. Macy, R. Elliott, F. W. Elliott, I. E. Clinefelter, F. Stockslager, C. C. Neal, E. V. Neff.

The Washington Metal Products Co., Washington C. H., \$50,000. J. D. Boons, P. S. Horton, E. R. Bales, J. F. Goebel, W. A. Lubbers, J. C. Boone.

The Horton Printing Co., Cleveland, \$25,000. E. E. Stearns, C. H. Hoyon, N. Hoyt, H. C. Chapin, A. Beck.

The Paradise Soda Grill Co., Elyria, \$80,000. L. Pease, D. Stanley, L. B. Fauver, B. L. Farmer, F. L. Hamel.

Increases

The McWade Tire & Rubber Co., Garrettsville, \$1,000 to \$5,000,000.

The Pfaff Motor Car Co., Cincinnati, \$10,000 to \$50,000.

The Akron Grocery Co., Akron, \$300,000 to \$1,000,000.

The Continental Bitumen Co., Toledo, \$10,000 to \$25,000.

The Orr, Brown & Price Co., Columbus, \$350,000 to \$500,000.

The Emerson Cap Co., Toledo, \$10,000 to \$30,000.

The York Supply Co., Greenville, \$100,000 to \$250,000.

The J. C. Divine Co., Alliance, \$25,000 to \$100,000.

The Dresch Laboratories Co., Toledo, \$10,000 to \$35,000.

The Elastowear Mfg. Co., Cincinnati, \$10,000 to \$25,000.

The Willard-Middletown Machine Co., Cincinnati, \$1,000 to \$200,000.

The Scott-Spencer Automatic Tool Co., Cincinnati, \$10,000 to \$50,000.

The Ornstein & Rice Co., Cincinnati, \$100,000 to \$150,000.

The Willey-Overland Co., Toledo, \$50,000,000 to \$75,000,000.

The Ohio Buff Sandstone Co., Cleveland, \$150,000 to \$350,000.

The Conneaut Masonic Temple Co., Conneaut, \$10,000 to \$150,000.

The Hardin Grain & Supply Co., Sidney, \$20,000 to \$35,000.

The Domal Savings & Loan Co., Cleveland, \$100,000 to \$1,000,000.

The West Wheeling Coal Co., Bellaire, \$50,000 to \$75,000.

The Kirk Co., Akron, \$100,000 to \$1,000,000.

The American Discount Co., Cleveland, \$10,000 to \$300,000.

The Automatic Electrical Devices Co., Cincinnati, \$30,000 to \$75,000.

The Ashtabula Corrugated Box Co., Ashtabula, \$25,000 to \$105,000.

The Swadey Brothers Co., Cleveland, \$150,000 to \$250,000.

The Loew's Park Theatre, Cleveland, \$1,000 to \$300,000.

The Euclid East Seventeenth Co., Cleveland, \$10,000 to \$900,000.

The Euclid Crane & Hoist Co., Euclid Village, \$10,000. to \$200,000.

The Rawlings Agnew & Lang Co., Cleveland, \$36,000 to \$150,000.

The Griswold-Eshleman Co., Cleveland, \$5,000 to \$30,000.

The Manufacturers Supply Co., Lima, \$35,000 to \$150,000.

The Reliance Savings & Loan Co., Cleveland, \$1,000,000 to \$5,000,000.

The Kenton Baking Powder Co., Cincinnati, \$90,000 to \$300,000.

The M. Marcus Building Co., Cincinnati, \$50,000 to \$75,000.

The Mellott Co., Bellaire, \$60,000 to \$80,000.

The Sterling Manufacturing Co., \$10,000 to \$250,000.

The Newark Ohio Furniture Co., Newark, \$150,000 to \$200,000.

The A. G. Birrell Co., Kinsman Twp., Trumbull Co., \$40,000 to \$50,000.

The Collings-Taylor Co., Cleveland, \$300,000 to \$615,000.

The Co-operative Machinery Co., Cleveland, \$25,000 to \$40,000.

The Grant Tool & Gauge Co., Cleveland, \$15,000 to \$50,000.

The Molly Stark Creamery Co., Canton, \$25,000 to \$75,000.

The Altimo Culture Co., Canfield, \$200,000 to \$500,000.

The Dayton Malleable Iron Co., Dayton, \$1,000,000 to \$1,400,000.

The Northland Coal Co., Columbus, \$25,000 to \$300,000.

The Greendale Co., Hiram, \$25,000 to \$50,000.

The National Coal Co., Cleveland, \$300,000 to \$600,000.

The Pleasant View Savings & Loan Assoc., Cleveland, \$100,000 to \$1,000,000.

The Canfield Oil Co., Cleveland, \$700,000 to \$850,000.

The General Rubber Goods Co., \$50,000 to \$100,000.

The Ideal Bronze Co., Cleveland, \$30,000 to \$100,000.

The East Youngstown Supply Co., E. Youngstown, \$20,000 to \$75,000.

The Freiberg Lumber Co., Cincinnati, \$50,000 to \$250,000.

Decreases

The Lenk Wine Co., Toledo, \$50,000 to \$2,000.

The Automatic Electrical Devices Co., Cincinnati, \$50,000 to \$30,000.

The Victor Oil Co., Cleveland, \$90,000 to \$900.00.

The Republic Structural Iron Works Co., \$825,000 to \$10,000.

